

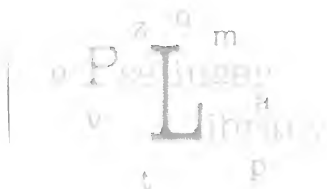




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# RATE RESEARCH



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# Rate Research

Vol. 17      New York, N. Y., April 1, 1920      No. 1

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## UNITED STATES COURT DECISIONS

### 310—Valuation.

The United States, ex rel. Kansas City Southern Ry. Co., v. Interstate Commerce Commission. Decision of the Supreme Court of the United States. March 8, 1920.

The Act of Congress of March 1, 1913 (37 Stat. 701), amending the "Act to regulate commerce," imposed the duty upon the Interstate Commerce Commission (section 19a) to "investigate, ascertain, and report the value of all property owned or used by every common carrier subject to the provisions of this Act."

The Commission proceeded to investigate and report the value of the property of the Kansas City Southern Railway Company. Upon completing a tentative valuation, the Commission gave the notice required by the statute to the Railway Company, which thereupon filed a protest against such valuation on the ground that in making it the Commission had failed to consider and include the "present cost of condemnation and damages or of purchase in excess of such original cost or present value."

This suit was brought to obtain a mandamus to compel the Commission to hear proof and act upon it under the statute. The amended petition, after reciting the facts and making the appropriate formal averments to justify resort to mandamus, alleged: "That the refusal of respondent to investigate and find such present cost of condemnation and damages or of purchase in excess of original cost or present value of relator's lands will result in great wrong and injury to relator; by way of illustration, such refusal will result in a finding by respondent of a value of but \$60,000 with respect to parcels of land acquired by relator by judicial award in condemnation proceedings during four years immediately preceding such valuation at an actual cost to relator of \$180,000; and in the aggregate will result in a finding with respect to said lands at least \$5,000.000 less than the value so directed by the Act of Congress above mentioned to be found."

It was further averred, with considerable elaboration, that the petitioner stood ready to produce proof to meet the requirements of the

statute which was neither speculative nor impossible to be acted upon, since it would conform to the character of proof usually received in judicial proceedings involving the exercise of eminent domain.

The Commission, in its answer, summarily reiterating the grounds for the refusal by the Commission to receive the proof or report concerning it, challenged the right to the relief sought.

A demurrer to the answer as stating no defense was overruled by the trial court, which denied relief without opinion. In the Court of Appeals, two judges sitting, the judgment of the trial court was affirmed by a divided court, also without opinion, and the case is here on writ of error to review that judgment.

The Supreme Court says:

"It is true that the Commission held that its non-action was caused by the fact that the command of the statute involved a consideration by it of matters 'beyond the possibility of rational determination,' and called for 'inadmissible assumptions,' and the indulging in 'impossible hypotheses' as to subjects 'incapable of rational ascertainment,' and that such conclusions were the necessary consequence of the Minnesota Rate Cases. (230 U. S. 352.)

"We are of opinion, however, that, considering the face of the statute and the reasoning of the Commission, it results that the conclusion of the Commission was erroneous, an error which was exclusively caused by a mistaken conception by the Commission of its relation to the subject, resulting in an unconscious disregard on its part of the power of Congress and an unwitting assumption by the Commission of authority which it did not possess. And the significance which the Commission attributed to the ruling in the Minnesota Rate Cases, even upon the assumption that its view of the ruling in those cases was not a mistaken one, but illustrates in a different form the disregard of the power of Congress which we have just pointed out, since, as Congress indisputably had the authority to impose upon the Commission the duty in question, it is impossible to conceive how the Minnesota Rate ruling could furnish ground for refusing to carry out the commands of Congress, the cogency of which consideration is made particularly manifest when it is borne in mind that the Minnesota Rate Cases were decided prior to the passage of the Act in question.

"Finally, even if it be further conceded that the subject-matter of the valuations in question which the Act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the Act of Congress, or what is equivalent thereto, of exerting the general power

which the Act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise.

"The judgment of the Court of Appeals is therefore reversed, with directions to reverse that of the Supreme Court, and direct the Supreme Court to grant a writ of mandamus in conformity with this opinion."

### **ILLINOIS**

#### **300—Investment and Return**

State Public Utilities Commission ex rel. City of Springfield v. Springfield Gas & Electric Company. Decision of the Supreme Court of Illinois. December 17, 1919. Rehearing Denied February 6, 1920.

This appeal is prosecuted to reverse the judgment of the Circuit Court of Sangamon county setting aside an order of the Public Utilities Commission entered March 9, 1916, in a proceeding begun January 12, 1914, by petition of the city of Springfield. The city complained that the rates charged for gas by appellee were unjust, and asked that the commission investigate and fix a just and reasonable rate. May 1, 1914, was fixed as the time to which valuation of the appellee's property should relate. The net rates complained of were \$1 a thousand cubic feet for the first 10,000 cubic feet of gas consumed a month, 90 cents for the next 10,000, 80 cents for the next 30,000, 75 cents for the next 50,000, 70 cents for the next 50,000, 65 cents for the next 50,000 and 60 cents for all over 200,000. The commission filed an opinion, in which it reached a decision establishing a net rate of 80 cents a thousand cubic feet for the first 10,000 cubic feet of gas consumed a month, 75 cents for the next 10,000, 70 cents for the next 30,000, 65 cents for the next 150,000, and 60 cents for all over 200,000. These rates were based on a 7 per cent. net return on a valuation of \$800,000, the commission deciding that 50 cents a thousand was a reasonable operating expense. In setting aside the order of the commission the Circuit Court found that in fixing the value of the appellee's property for rate-making purposes the commission had wholly excluded an item of \$250,000, known as "going value"; that the commission did not give appellee sufficient credit for a new million-foot gasholder; that the classification of rates discriminates between users because the rates fixed by the commission require that that part of the gas sold to the small consumer be sold at a loss, and that the profits of the company must all come from that part sold to the large consumer, which is only about one-third of the total amount of gas sold by appellee, and that the commission acted contrary to the manifest weight of the evidence in fixing the total operating expense at 50 cents a thousand.

The Supreme Court says:

"The question presented for us to determine is whether the commission proceeded legally in establishing the rates, and whether its

conclusion that the rates established are just and reasonable is supported by the evidence. In order to determine this question it is necessary to determine what elements shall be considered in fixing the value for rate-making purposes, what methods shall be used in determining the value of these several elements for this purpose, and what shall be considered a fair and reasonable return on the value so ascertained. It will also be necessary for us to determine to what extent this court will review the decisions of the Public Utilities Commission. . . .

### 311—Basis of Valuation

"The rate established must be just and reasonable, both to the public and to the utility. In *Public Service Gas Co. v. Utility Com'rs*, 84 N. J. Law, 463, 87 Atl. 651, L.R.A. 1918A, 421, it is said that a just and reasonable rate can never exceed—perhaps can rarely equal—the value of the service to the consumer, and on the other hand it can never be made by compulsion of public authority so low as to amount to confiscation; that a just and reasonable rate must therefore certainly fall between these two extremes, so as to allow both sides to profit by the conduct of the business and the improvement of methods and increase of efficiency; that justice to the consumer, ordinarily, would require a rate somewhat less than the full value of the service to him, and justice to the company would ordinarily require a rate above the point at which it would become confiscatory; that to induce the investment and continuance of capital there must be some hope of gain commensurate with that realizable in other business, and that the mere assurance that the investment would not be confiscated would not suffice. Ordinarily that is a reasonable charge or system of charges which yields a fair return upon the investment. *Brymer v. Butler Water Co.*, 179 Pa. 231, 36 Atl. 249, 36 L.R.A. 260. Generally speaking, a rate which is non-confiscatory would not be so unjust and unreasonable as would authorize setting aside the decision of the commission fixing such a rate (*Public Utilities Com. v. Toledo, St. Louis & Western Railroad Co.*, 267 Ill. 93, 107 N.E. 774; *Chicago, Milwaukee & St. Paul Railway Co. v. Public Utilities Com.*, 267 Ill. 544, 108 N.E. 737), and yet there is a difference between a rate which is merely non-confiscatory and one which is just and reasonable, and it is the just and reasonable rate which the commission is called upon to fix. The utility is entitled to ask a fair return upon the value of that which it employs for public convenience, but, on the other hand, the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth. *Smyth v. Ames*, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. Ed. 819; *San Diego Land & Town Co. v. National City*, 174 U. S. 739, 19 Sup. Ct. 804, 43 L. Ed. 1154; *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. Ed. 892; *Stanislaus County v. San Joaquin & King's River*

Canal & Irrigation Co., 192 U. S. 201, 24 Sup. Ct. 241, 48 L. Ed. 406; *Chicago Union Traction Co. v. City of Chicago*, 199 Ill. 579, 65 N.E. 470. The property of the public utility is devoted to the public use. There is always the obligation springing from the nature of the business in which it is engaged—which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered. But the state has not seen fit to undertake the service itself, and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection, which extends, not merely to the title, but to the right to receive just compensation for the service given to the public. *Simpson v. Shepard*, *supra*. No direct parallel can be drawn between a private corporation and a public service corporation, for the reason that to a greater or lesser extent the public has acquired an interest in the use of the property devoted to public use, and correlatively the company owes a duty to the public as well as to its stockholders, and must charge no more than a reasonable rate for service rendered. *Havre de Grace & Perryville Bridge Co. v. Towers*, 132 Md. 16, 103 Atl. 319.

#### 224—Rates

“The difficulty is that which is always present—to ascertain a standard by which this justice and reasonableness shall be gauged. The necessity of public regulation of rates arises out of the monopoly of the public service company. The unregulated price of the service ceases, except so far as some substitute for the particular service may be found, to be determined by competition, and the individual consumer is unable to contract on equal terms. Fixing rates by public authority may secure to each individual the advantage of collective bargaining by or in behalf of the whole body of consumers, and result in such a rate as might properly be supposed to result from free competition if free competition were possible. A just and reasonable rate, therefore, is necessarily a question of sound business judgment rather than one of legal formula, and must often be tentative, since exact results cannot be foretold. *Public Service Gas Co. v. Utility Com’rs*, *supra*. Like so many other questions in the law that involve reasonableness of conduct, it is a question of fact to be settled by the good sense of the tribunal it may come before. That it is not a question of legal formula is shown by a decision of the United States Supreme Court in *San Diego Land & Town Co. v. Jasper*, *supra*, that a rate may be reasonable although it fails to produce an adequate return to the public service company, owing to the fact that the business has not developed sufficiently to be remunerative, or to the fact that the plant is on a larger scale than is justified by the present demand. The real test of the justice and reasonableness of any rate seems to be that it should be as low as possible, and yet sufficient to induce the investment of capital in the business and its continuance

therein. This, also, is a business question, and depends on the opportunities that may be offered for more profitable investments and the risk involved. In determining the justice and reasonableness of rates, perhaps no better test can ordinarily be found than the rates customarily charged in localities similarly situated. And yet this test is not by any means infallible. What is a reasonable return is a question of fact, the solution of which calls for the exercise of sound judgment and common sense. *Duluth Street Railway Co. v. Railroad Com.*, 161 Wis. 245, 152 N.W. 887.

"Appellee contends that the only equitable basis for determining value for rate-making purposes is the cost of reproduction new, less depreciation. This contention cannot be sustained. The basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a public utility under legislative sanction must be the fair value of the property being used by it for the convenience of the public, and in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the present cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case. *Smyth v. Ames*, *supra*; *San Diego Land & Town Co. v. National City*, *supra*; *Stanislaus County v. San Joaquín and King's River Canal & Irrigation Co.*, *supra*; *Chicago Union Traction Co. v. City of Chicago*, *supra*; *Duluth Street Railway Co. v. Railroad Comm.*, *supra*. . . .

### 310—Valuation

"In *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 29 Sup. Ct. 192, 53 L. Ed. 382, 15 Ann. Cas. 1034, 48 L.R.A. (N.S.) 1134, it was held that there must be a fair return upon the reasonable value of the property at the time it is being used for the public; that such a value was largely a matter of opinion; and that, added to this indefinite basis, is the further uncertainty of whether or not the reduced rate will increase consumption. It was further said that the value of the property is to be determined as of the time when the inquiry is made of the rates, and if the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the company is, as a general rule, entitled to the benefit of such increase. This would not be true, however, where the property had increased so enormously in value as to render a rate permitting a reasonable return upon such increased value unjust to the public. So in *Denver v. Denver Union Water Co.*, 246 U. S. 178, 38 Sup. Ct. 278, 62 L. Ed. 649, it was held that it was proper to estimate complainant's property on a basis of present market values as to land, and reproduction cost, less depreciation, as to structures, but it was not held that this was the only proper basis on which to fix values for rate-making purposes. . . .



"It would be equally as unfair to the consumer to fix the rate at a figure which would produce a reasonable income on a value determined by the cost of reproduction new at a time when cost of construction was abnormally inflated, as it would be unfair to the public utility to compel it to serve the public for a rate that would produce a reasonable income on a value determined by cost of reproduction new at a time when the cost of construction was abnormally low. Therefore it cannot be laid down as a rule without qualifications that cost of reproduction new, less depreciation, is the only basis of valuation of rate-making purposes. It is equally true that the original cost of construction, less depreciation, cannot be held to be the only proper basis for determination of valuation for rate-making purposes. As we have pointed out heretofore in this opinion, the weight of authority is that every element having any bearing on the situation must be considered in the investigation, and then sound business judgment applied to the determination of a valuation that is fair and just to the consumer and the utility. Each case must be considered on its own merits, and such result of value arrived at as may be just and right in each case. It is not a matter of formulas, but there must be a reasonable judgment, having its basis in a proper consideration of all relevant facts. We consider any value a fair value which fair and reasonable men would say ought to be attached to the property, under all the circumstances of the particular case, for the purpose of measuring a return which the public should pay to the owner.

### 315.1—Going Value

"The element of value which is the subject of serious contention between the parties to this litigation is what is known as "going value." In view of the settled law on this subject the question is no longer open to discussion. That a going concern has a value over and above the value of the physical property employed is self-evident. From the nature of this element of value it cannot be arrived at with mathematical accuracy, but must necessarily be considered in the light of the facts of each particular case. The solution of the problem is one peculiarly within the province of the commission, and this court will not substitute its judgment for that of the commission if the commission has considered the element of going value in reaching its decision. This conclusion finds support in the following, among other, authorities: *Public Service Gas Co. v. Utility Com'rs*, supra, *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 35 Sup. Ct. 811, 59 L. Ed. 1244. *Cedar Rapids Gaslight Co. v. Cedar Rapids*, 144 Iowa 426, 120 N. W. 966, 48 L. R. A. (N. S.) 1025, 138 Am. St. Rep. 299. This holding is approved by the Supreme Court of the United States in considering the same case, reported in 223 U. S. 655, 32 Sup. Ct. 389, 56 L. Ed. 594. *Denver v. Denver Union Water Co.*, supra. *Duluth Street Railway Co. v. Railroad Com.*, supra. . . .

The Commission, in its decision, finds that :

“After considering all the evidence and testimony in this case bearing upon the value of the property herein, the cost to reproduce, the original costs, the investment, the present value, all overheads, including such as preliminary costs, engineering, supervision, interest, insurance organization and legal expenses during construction, contingencies, and all other elements of value (tangible and intangible) and taking into consideration that the plant is now in successful operation and a going concern, the commission finds the fair value of the respondent's gas property in Springfield, for the purpose of determining reasonable and just rates, to be \$744,000, exclusive of working capital. (Working capital is here used to mean necessary cash, coal, materials, supplies, etc., essential to the successful operation of the gas utility). For working capital, thus defined, the commission hereinabove has set forth \$56,000 to be reasonable and adequate in the premises. The total valuation, for the purpose of establishing just and reasonable gas rates in Springfield, therefor, is in amount \$800,000.”

The Court says:

“Notwithstanding this statement of the commission we are convinced from an examination of the record that it did not give due consideration to that element of value known as ‘going value.’ Our conclusion in this regard is given support by the declaration in the opinion of the commission that—

“ ‘This commission holds that going value, in its commonly accepted meaning, either may or may not exist in a given utility property.’

“We cannot agree with this statement in view of the authorities hereinbefore cited and discussed. This element of value is always present in every assembled and established plant doing business and earning money. It is a property right, and must be considered by the commission in determining the value of the property upon which the utility has a right to make a fair return. The engineer for the commission and the engineers for the company all state that the valuation fixed by them did not include an allowance for ‘going value.’ As we have said this element of value is one that cannot be fixed with mathematical accuracy, and while it is not necessary that the finding of the commission fix a separate value for it, it is necessary that the finding show that due consideration was given to this part of the property of the utility. The evidence in this record is undisputed that there was an element of value over and above the valuations fixed by the engineers which was not considered by the commission in fixing the value of appellant's property. The whole value found by the commission is over \$6,000 less than the depreciated original cost of labor and material in the property as testified to by the engineer for the commission, and more than \$100,000 less

than that testified to by the engineers for the company. It is obvious, therefore, that the commission has made no allowance for going value, because its own engineer, as well as those for the company, testified that these estimates included nothing for going value. The total value for rate-making purposes as fixed by the commission is therefore against the manifest weight of the evidence, because it does not include this element of value which the uncontradicted evidence shows to exist. . . .

#### 400—Rate Theory

"Exchange value should not be considered by the commission in establishing the proper valuation as a basis for rate-making purposes. The exchange value is, in the case of a property whose function is simply to earn money, determined primarily by the earning power, and the more unjust and unreasonable the charge made by the utility the higher the exchange value. In rate cases the question in determining the value is not how much has been or can be got out of the property, but how much has been put into it, in order that from that fact it may be determined just how much may be reasonably taken out of it in the way of net income. Exchange value is therefore measured by return. . . .

"It is also contended by appellee that the cost of supplying gas to the small consumer is greatly in excess of the amount allowed in the schedule established by the commission, and that the burden of paying the return on the capital invested is placed on one-third of the output of gas; that is, the third taken by the large consumers. The point here in question was passed upon by the Supreme Court of the United States in *Wilcox v. Consolidated Gas Co.*, supra, where objection was made on behalf of the company to the reduced rate fixed for gas supplied to the city. It was there said:

"'Lastly, it is objected that there is an illegal discrimination as between the city and the consumers individually. We see no discrimination which is illegal or for which good reasons could not be given. But neither the city nor the consumers are finding any fault with it, and the only interest of the complainant in the question is to find out whether, by the reduced price to the city, the complainant is, upon the whole, unable to realize a return sufficient to comply with what it has the right to demand. What we have already said applies to the facts now in question. We cannot see, from the whole evidence, that the price fixed for gas supplied to the city by the wholesale, so to speak, would so reduce the profits from the total of the gas supplied as to thereby render such total profits insufficient as a return upon the property used by the complainant. So long as the total is enough to furnish such return, it is not important that, with relation to some customers, the price is not enough.'"

(To be continued in next week's issue of Rate Research)

## COMMISSION DECISIONS

## OREGON

## 224—Rates

Home Telephone Company of Condon, Application for Authority to Increase Rates. Decision of the Oregon Public Service Commission, Granting an Increase. February 20, 1920.

The Home Telephone Company of Condon, in its application for authority to increase its rates, claims the need of increased revenues because of advances in the cost of labor and material, and in view of the projected replacement of the present switchboard by another of larger capacity and greater efficiency and of the replacement of approximately forty per cent. of the poles within the near future.

## 310—Valuation

An appraisal of the property was made concurrent with and is part of this proceeding, and an analysis of the utility's operating revenue and expenses was presented at the hearing. On the basis of the twelve months ended September 30, 1919, the revenues were shown to be \$5,131.00. For the same period, operating expenses, including an allowance for depreciation, and taxes, equalled approximately \$4,455.00. There then remained \$676.00 as an operating income. Further testimony indicated that the increased wages and other increased operating costs would very materially decrease the amount of this operating income.

The Commission says:

"If the rental of \$720.00 paid for the use of the plant is deducted from the \$676 above it shows an apparent loss to the lessee for this period.

"Although the rental amount is probably considered by the owner as covering both the return on his plant value, and also the depreciation thereon, while leased to applicant, the latter included depreciation in his own expenses in presenting this matter at the hearing. Having made an allowance for depreciation and operating expenses, there remains to be considered by the Commission only a fair return upon the fair value of this utility property regardless of ownership. The amount of such fair return, and such amount only, will be allowed in the rate hereinafter fixed.

"As an offset to the error in twice presenting in effect the allowance for depreciation, there have been marked increases in the wage scale of telephone employees, and in the cost of materials used for current maintenance. Depreciation on the replacements to be shortly made at increased cost will be correspondingly higher. As a result we find that only a very moderate net increase in rates is justifiable.

"The increased rental now paid for use of desk telephone over that for wall phone at 50 cents per month is unreasonably high, and will be reduced to the now almost universally standard amount of 25 cents per month. The rates for extensions are also fixed to conform to standard practice. Two party rates for both business and residence service are provided.

"It is evident that the value of the existing plant is not the proper one for basing rates for future service delivered by a new and improved plant, the cost of which, at this time, is not definitely known. We consequently will not find a value for rate making purposes at this time. However, revenues, expenses, and operating income (return) considering a new and improved plant, have been estimated and serve as a basis for the rates hereinafter prescribed."

### WISCONSIN

#### 122—Just and Reasonable Charges

Friendship Electric Light and Power Company, Application for Authority to Increase Rates. Decision of the Wisconsin Railroad Commission, Denying the Application. February 27, 1920.

The Friendship Electric Light and Power Company filed an application for authority to increase its rates, alleging that a change from 133 cycle energy to 60 cycle energy is being demanded and that this will make necessary extensive reconstruction work on both power plant equipment and lines and further that the present financial condition of the company is such that the cost of new equipment, additional flowage, etc., would be an unwarranted expenditure of funds at the present time.

The Commission says:

"In our minds there is little doubt that a substantial increase in revenue will result when the system is changed, through the power loads taken on as well as from the natural increase in lighting load with the growth of the villages. From the facts submitted, the Commission does not deem an increase in rates warrantable at this time. While the company has not in the last two years been making a return generally considered as normal, in the previous years the return was excessive and the rates were reduced by order of the Commission.

"In general the Commission does not believe that increases in rates are justified prior to improvements and enlargements unless the present and past return has been unusually small and the prospects for the future are no better. In this case little or no increases in operating expenses will result and there appears to be a good field for growth of load.

"Under the present conditions the rates proposed should not be

approved. If experience with changed methods of operation indicate that some revision is necessary, the matter can be brought up at a later time."

## MISSOURI

### 132—Protection From Competition

Union Electric Light and Power Company v. Libbe Power Company, Complaint Against Defendant For Generating and Selling Electricity Without Having Secured the Consent of the Commission. Decision of the Missouri Public Service Commission, Dismissing the Complaint. December 31, 1919.

The defendant generates and sells electricity to his own factory, the Bone and Bit Products Company, and to the Missouri Meerschaum Company and Hirschl and Bendheim. The defendant testified that he had not offered electricity for power for sale to the public at Washington, Missouri, and has not procured a certificate of convenience and necessity as provided by section 72, Public Service Commission Law. The complainant is a corporation organized for and engaged in generating, distributing and selling electricity for light, heat, and power, and contends that it has the right to be protected against the operations of the defendant which interfere, or have a tendency to interfere, with the business of the complainant, except where the defendant has secured the same rights that the complainant has for the same purposes. The Commission says:

"If the defendant is an electrical corporation within the meaning of the Public Service Commission Law, then he cannot lawfully continue in business as such without the permission of the Public Service Commission, Section 72, Public Service Commission Law. . . .

"It is the purpose of the Public Service Commission Law to secure for the public adequate service and reasonable rates from public service corporations by regulation by law, rather than by competition. An electrical corporation cannot begin business without the permission of the Commission, it being the evident intent of the law to restrict competition and protect a utility company in the occupation of a field as a better means of securing good results for both the company and the public than competition. There was no complaint against the defendant until he undertook to cross the public street at Washington to serve Hirschl and Bendheim. If the defendant is permitted to serve Hirschl and Bendheim without becoming subject to regulation, as provided by the Public Service Commission Law, will he be permitted to serve others, and where is the line to be drawn at which he must stop before becoming subject to regulation as an electrical corporation?

"The terms 'electrical corporation' and 'electric plant' are defined by subsections 12 and 13 of Section 2, Public Service Commission

Law, which were construed by the supreme court of this state in the case of *State ex rel. Danciger & Co. v. Public Service Commission*, 275 Mo. 483, P. U. R. 1919 A, l. c. 353, 359. The court in construing the statute read into it the words 'public use' upon the ground that the power of regulation was necessarily based upon the devotion of the property to public use. The basis of regulation so found seems to be somewhat narrower than laid down by the Federal Supreme Court in the case of *German Alliances Ins. Co. v. Kansas*, 233 U. S. l. c. 407, 408, where it was held that the basis for public regulation is the public interest in the business. . . .

"The defendant in supplying electricity to the Missouri Meerscham Company and to his own factory was obviously not devoting his property to public use. Did his status change when he began to sell electricity to Hirschl and Bendheim? Under the ruling of the court in the Danciger case, *supra*, the Commission holds that the defendant is not engaged in generating and selling electricity for public use, and that the defendant is not an electrical corporation within the meaning of the Public Service Commission Law. Therefore, the complaint herein should be dismissed."

## REFERENCES

### RATES

#### 224—Rates

Clear Cut Decision Determines Fares in Chicago. Editorial. *Electric Railway Journal*, February 28, 1920, p. 422, 1/2 page.

"As the streets are for the use of all citizens of the state, the question of rates of fare is not one of local concern, merely, or of local politics." In this pointed sentence we find the keynote to the sound views of the Illinois Supreme Court, as expressed in the *Chicago Surface Lines* fare case. The decision was a sweeping victory for the companies, reversing the lower court and sustaining the liberal stand taken by the members of the Public Utilities Commission. It gave little consolation to the municipal authorities who had been insisting on the inviolability of the 5-cent fare provisions in the contract ordinances. While the Supreme Court had previously taken the positive stand that the general assembly had never relinquished to municipalities the power to regulate rates of fare, the city lawyers contended that the Chicago situation was different because the ordinance creating the contract was adopted under a special law. This position, the court said, is untenable.

Perhaps the most important feature of the decision so far as Illinois utilities are concerned is that in which the Supreme Court dismisses the objection that the Commission had no authority to fix a temporary rate based upon increased operating expenses, and could only make a change upon a full hearing and examination which would demonstrate what a permanent rate ought to be. Some outside authorities had expressed the opinion that the Illinois utilities act was defective in this particular. The court holds that the Commission has full authority to provide for emergency orders. It sets aside the contention that the city did not have a reasonable opportunity to be heard and says the Commission would be justly chargeable with neglect of duty if it had not taken prompt

action to save the companies from bankruptcy at a time when the employees had secured a considerable increase in wages following a strike.

The Illinois Public Utilities Commission has established a reputation for fair dealing with the public, employees and utilities alike. At a time when service was brought to a standstill because the platform men were insisting that they were not receiving a living wage, the Commission acted as arbitrator and brought about an adjustment of the difficulty. This settlement was pleasing to the employees and to the public. A prompt adjustment of fares brought relief to the companies, yet when the amount of revenue produced by the increased fares appeared excessive, the rates were again lowered. Several recent decisions of the state's highest court have strengthened the position taken by the Commission, and it is expected that when the present valuation proceedings are concluded substantial justice will be done. Meanwhile, those who have opposed the higher fare petition for political purposes are finding that innuendo and threats have failed to swerve either the utility commissioners or the courts.

### GENERAL

#### 980—Public Relations

The Art of Conciliation, by S. M. Kennedy. *Journal of Electricity*, February 15, 1920, p. 171, 3¼ pages.

In this article the writer discusses what the basis of public confidence in the utility company is, and how it may be won. He says:

"The regulation of public utilities by State Commissions has advanced step by step during recent years, and it is inevitable that every public utility company in the United States will eventually be subject to the immediate control of some Commission responsible to the people. In the main, patrons, consumers, managers, owners and security holders of such properties have been satisfied with the results thus far achieved. Uniform rates have been established, uniform systems of accounting have been put into effect and in some directions uniform methods of operation have been made possible. Some Commissions have very broad powers, and while the distinction between regulation and management is recognized, there is always a possibility that regulation may be extended. If a State Commission has power to dictate what rates shall be charged, what shall be the quality of service and the conditions under which it shall be supplied, then why should it not control the personal treatment which shall be given customers by a public utility through its employees? Are not civility, courtesy and attention as much a part of good service as the rate charged or the voltage delivered? These questions are asked, but such minute supervision is not advocated. However, the trend of the times may bring some surprises in this direction. It would not be an improbable thing for traveling representatives of a Commission to drop into some of the public offices of utility companies, just to learn at first hand how the company treats its patrons across the counters and over the telephones, and through this agency a few company managers might be enlightened about the way their assistants are handling the public. Maybe the trend of the times is pointing to something still more radical. Is it not within the bounds of possibility that some commissions might put a premium upon records of broad public policy and the personal touch in management and a penalty may be imposed where a company's reputation in this regard is below a desired standard. Such premiums and penalties might be easily provided when rate fixing investigations are under way. All rates are calculated upon a basis to yield a certain net return on the capital invested. An increase of, say one per cent. above the average allowed, would be a handsome premium for some companies, and a decrease of one per cent. would, in some cases, be a severe penalty.



Vol. 17

April 8, 1920

No. 2

# RATE RESEARCH



PUBLISHED BY THE  
RATE RESEARCH DEPARTMENT  
OF THE  
NATIONAL ELECTRIC LIGHT ASSOCIATION  
29 West 39th Street, New York, N. Y.

**STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912**

Of **RATE RESEARCH**, published weekly at 29 West 39th Street, New York, N. Y., for April 1, 1920.

State of New York }  
County of New York } ss.

Before me, a Notary in and for the State and county aforesaid, personally appeared **IRENE J. JINDRA**, who, having been duly sworn according to law, deposes and says that she is the Associate Editor of **RATE RESEARCH**, and that the following is, to the best of her knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Name of Publisher, { Post Office address,  
National Electric Light Association. . . . . { 29 W. 39th St., New York, N. Y.

Editor, Fred W. Herbert, 29 West 39th Street, New York, N. Y.

Managing Editor, none.

Business Managers, none.

Associate Editor, Irene J. Jindra, 29 West 39th Street, New York, N. Y.

2. That the owners are: (Gives names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock).

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(Signed) NATIONAL ELECTRIC LIGHT ASSOCIATION,  
IRENE J. JINDRA, Associate Editor.

Sworn to and subscribed before me this 30th day of March, 1920.

(Signed) CHESTER A. DICK.

(Seal)

(My Commission expires March 30, 1921.)

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## Rate Research

**Vol. 17**

**APRIL 8, 1920**

**No. 2**

FRED W. HERBERT, *Editor*

IRENE J. JINDRA, *Associate Editor*

29 West 39th Street, New York City

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# Rate Research

Vol. 17

New York, N. Y., April 8, 1920

No. 2

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### ILLINOIS

#### 300—Investment and Return

Freeport Gas Company, Application For Authority to Increase Rates. Decision of the Illinois Public Utilities Commission, Granting an Increase. January 3, 1920.

The Freeport Gas Company filed a rate schedule with the Commission, in which it proposed to advance the rates for general gas service in the city of Freeport. Accompanying the rate schedule was a petition in which the Freeport Gas Company requested permission to place in effect all operating expenses, taxes, interest on funded and floating indebtedness, and dividends on its preferred stock. The company also requested that advanced rates be at once placed in effect, with the understanding that if the Commission subsequently determined that such rates and charges were excessive, there would be refunded to its consumers all amounts in excess of the fair and reasonable rates ultimately determined by the Commission.

#### 310—Valuation

Evidence was offered as to the value of the property, and its costs of operation were presented in detail. A complete inventory and several appraisals of the property, made by engineers representing petitioner, the city of Freeport, Illinois, and the Commission, form part of the evidence in the case.

The Commission says:

"In *Smyth v. Ames*, 169, U. S. 466, 546, the Court says: 'What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.'

"From the foregoing language of the Supreme Court of the United States it is plain the Commission, in fixing just and reasonable rates, cannot be guided by the earnings that may be necessary to cover interest and dividends, but must determine the fair value of the

property for rate making purposes and reasonable sums to provide operating expenses, taxes, depreciation, and return upon investment.

#### 319—Land

The Company purchased in August, 1913, a tract of land, ostensibly as a site for a future office building. Regarding the value of this land, to be included in the appraisal of the property, the Commission says:

"Evidence in this case does not disclose when the company expects to use this land for office building purposes. The company purchased the tract about six years ago and has thus far not improved it. Were evidence conclusive that this land would be used by the company within a reasonable time there is no doubt its value should be included in the fair rate making value of the property. In the absence of such evidence the Commission is of the opinion, and so finds, that this land ought not be considered as used or useful in the conduct of the business of the company, and that its value should be excluded in determining the fair rate making value of the property. (See *City of Springfield v. Springfield Gas & Electric Co.*, P. U. R. 1916, C, 281; *City of Peoria v. Central Union Telephone Co.*, P. U. R. 1918, E, 74; *Jacksonville Railway & Light Co.*, I. P. U. C. Opinions and Orders 1916, 417.

#### 315.1—Going Value

"From the evidence in this case the Commission can find no basis for a separate allowance for going value. However, in fixing the fair rate making value of the property herein involved the Commission will take into consideration "that there is an element of value in an assembled and established plant, doing business and earning money." (*Des Moines Gas Co. v. City of Des Moines*, 238 U. S. 153-163.)

#### 360—Depreciation

"The principles involving depreciation have heretofore been treated at length by this Commission. (See *City of Springfield v. Springfield Gas & Electric Co.*, P. U. R. 1916 C, 345), and therefore need not at this time be discussed in detail. All of the appraisals placed in evidence in this case, except the one submitted by Lea, contain deductions for the depreciation accrued at the time of the valuation. Without extended discussion, it may be stated as the opinion of this Commission that, in equity to the consumers and the utility, the weight of authority compels a reasonable deduction from cost new for accrued physical and functional depreciation. In this case the Commission will be guided by the principles laid down in *City of Springfield v. Springfield Gas & Electric Co.*, supra, a position upheld by the United States Supreme Court in *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, in which the Court said:

"\* \* \* The cost of reproduction is one way of ascertaining

the present value of a plant like that of a water company, but the test would lead to obviously incorrect results, if the cost of reproduction is not diminished by the depreciation which has come from age and use \* \* \*

“The cost of reproduction is not always a fair measure of the present value of a plant which has been in use for many years. The items composing the plant depreciate in value from year to year in a varying degree \* \* \*

“It is not easy to fix at any given time the amount of depreciation of a plant whose component parts are of different ages with different expectations of life. But it is clear that some substantial allowance for depreciation ought to have been made in this case \* \* \*

“Section 14 of the Illinois Public Utilities Act provides:

“The Commission may, from time to time, ascertain and determine, and by order fix the proper and adequate rate of depreciation of the several classes of property for each public utility.’

“The record is not clear as to whether in the past the Freeport Gas Company has made sufficient provision to care for accruing depreciation. It appears that various reserves have been provided, particularly for maintenance in connection with such articles as benches, meters, motor equipment, stable equipment, and for various repairs.

“Regardless of whether or not the company in the past has provided a proper reserve fund to care for accruing depreciation, it is entitled, in addition to all operating expenses, taxes, and return upon investment, to earn a sufficient amount each year to care for the physical and functional depreciation in its property. In the uniform system of accounts prescribed by this Commission for Gas companies, effective January 1, 1919, all funds established for the purpose of caring for accruing depreciation must be credited with any earnings arising therefrom.

“In this case, considering the probable earnings from such fund, the Commission is of the opinion, and so finds, that petitioner should be allowed to earn each year to care for accruing depreciation the sum of \$7020 which, based upon estimated annual sales of 117,000,000 cubic feet of gas, is equivalent to six cents (6c.) per thousand cubic feet. The Commission further finds that, beginning January 1, 1920, there shall be annually set aside, to care for accruing depreciation, the sum of \$7020, plus one and one-half per cent. ( $1\frac{1}{2}\%$ ) of all depreciable additions and betterments to the property.

### 310—Valuation

“Of fundamental importance in the fixing of just and reasonable rates is the determination of the fair rate making value of the prop-

erty used and useful in rendering the service. In numerous cases involving the fixing of rates our courts have laid down basic rules governing the principles involved in such cases. *Smyth v. Ames*, 169 U. S. 466, *Minnesota Rate Cases* (230 U. S. 352), *Knoxville v. Knoxville Water Company*, 212 U. S. 1 \* \* \*

"Upon the fair value of its property devoted to furnishing gas service, petitioner is entitled to earn a reasonable return. In determining such fair value in this case the Commission has followed the principles laid down in the *Minnesota Rate Cases*, 230 U. S. 352, *supra.*, where it is said:

"The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment, having its bases in a proper consideration of all relevant facts \* \* \*

"After considering all the evidence and arguments of counsel in this case bearing upon the valuation of the property herein involved, the investment therein, its original cost, its cost to reproduce, and present value, including all overheads; preliminary costs; costs of engineering, supervision, interest, insurance, organization, and legal expenses during construction; working capital; materials and supplies; and all other elements of value, tangible and intangible, and considering the plant is now a going concern in successful operation, the Commission finds the fair value of petitioner's property for the purpose of determining just and reasonable rates, is \$525,000.

#### 340—Rate of Return

"Under accepted theories of public utility regulation, it is axiomatic that the fair value of property devoted to public service is entitled to a reasonable recompense. The Commission has heretofore in numerous decisions pointed out the elements involved in reasonable rates of return.

"Besides the cost of money, which varies with the prices of other commodities, it appears reasonable to reward management of a public utility enterprise in proportion to results achieved, a proposition based upon sound business principles and economic laws, and a principle that has heretofore been recognized by this Commission. (See *Lincoln v. Lincoln Water & Light Co.*, *supra.*)

"In the case of *Omaha and Council Bluffs Street Railway Company v. Nebraska State Railway Commission et al.*, the Nebraska Supreme Court said:

"'Capital can be attracted to these enterprises only as there is confidence that fair returns, under reasonably capable management, will be allowed.' (P. U. R. 1919F., p. 308.)

"The evidence in this case shows the local management of the

petitioner is efficient, economical, and, with the exception of a brief period, has furnished reasonably satisfactory service.

"Taking into consideration the evidence in this case, the Commission is of the opinion, and so finds, the company is entitled to an annual rate of return upon the fair value of its property hereinbefore determined of between seven and seven and one-half per cent."

## CALIFORNIA

### 500—Rate Practice

Excelsior Water and Mining Company. Application for Authority to Increase Rates. Decision of the California Railroad Commission, Granting an Increase. January 9, 1920.

Excelsior Water and Mining Company, a public utility engaged in the business of selling water for irrigation in Nevada, Yuba and Placer counties, State of California, asks authority to increase its rates, and alleges that its income is unremunerative and does not produce sufficient revenue to meet operating expense, depreciation and a return upon the value of its plant, and prays that the Railroad Commission establish a rate of \$45 per miner's inch, or a reasonable rate.

The Commission says:

"It appears that the company does not actually record the use of water on all of its own lands, and in one instance a portion of a holding was irrigated and no charge was made nor use of the water reported. Because of these practices it is impossible to determine what income would be produced from the use of water by any given rate schedule. In another instance, water is diverted from the stream by another company, also owned and controlled by the same ownership as applicant, and delivered at the intake of applicant's canal. This company charges applicant the same rate for this service as applicant charges its consumers, claiming that there is a reduction of loss by evaporation and seepage due to thus transmitting the water. Excelsior Water and Mining Company loses by this transaction, because it expends money in distributing this water to its consumers. We suggest that it correct these inefficient and uneconomical methods of operation, and in the future exercise more care in the conduct of its business.

"It is apparent, however, that applicant is entitled to a rate increase, in view of the fact that the present rate schedule produces approximately \$10,000 less than the necessary operating expenses.

"It then remains to determine the amount which should in fairness be paid by the consumers for the service rendered in view of the crops produced and the conditions under which they are produced.

"Certain consumers in the lower districts have been irrigating a

considerable area planted to rice, with water which owing to the topographical conditions cannot be used at present for the irrigation of orchards or other crops. Furthermore, a large area is irrigated for pasture. This use of water is uneconomical and cannot survive, even with a comparatively low rate.

"Applicant, however, has clearly dedicated its water for use within this district, and it would be unfair to consumers to establish a prohibitive rate. This, we believe, would so reduce the use of water that, despite increased rates, applicant's gross revenue would be materially reduced.

"This Commission urges upon the water users of this system that they use their best endeavor to put the water to a higher use, either by developing orchards or otherwise, and gradually eliminate the use of water for purposes which must necessarily be unprofitable in a district where the cost of water delivered is high.

"The development of a further water supply for any considerable area of land under this system would necessitate the construction of a dam for the purpose of impounding water.

"This development, however, is dependent upon the water users putting their land to its most beneficial use. We believe that there should be concerted action on the part of applicant, and all of its consumers, to develop this district and put the water to a much higher use than that use which at present prevails. In fairness to the company, a rate schedule cannot be long maintained which does not produce an income sufficient to make the operation of the system profitable. We suggest to the consumers and other landowners within this district that immediate steps be taken to further develop the lands receiving their water supply from this system, and that they co-operate with the company in securing an additional water supply. The importance of such action cannot be over-emphasized, in view of the fact that the very life of this district, from an agricultural standpoint, is dependent thereon."

## COURT DECISIONS

### ILLINOIS

#### 300—Investment and Return

State Public Utilities Commission ex rel. City of Springfield v. Springfield Gas & Electric Company. Decision of the Supreme Court of Illinois. December 17, 1919. Rehearing Denied February 6, 1920. (Continued from 17 Rate Research 5-11.)

#### 317—Construction in Advance of Present Needs

It is contended by appellee that the commission did not include in its



valuation a 1,000,000-foot gasholder erected by the company in 1913.

The Court says:

"The commission found that a portion of the capacity of this 1,000,000-foot gasholder necessarily would be used and useful for gas-making purposes in Springfield at the date of the valuation, and that a greater proportion of the capacity will be required by the consumers from year to year until the full capacity is finally utilized. It found that the capacity of the holder was not unduly large in view of appellant's probably justifiable faith in the near future growth of gas sales in Springfield to reach a send-out which would utilize the ultimate holder capacity. The evidence shows the value of this holder, with its auxiliary mains and accessories, to be approximately \$100,000. Because of the fact that the whole capacity of the holder was not in use at the time of the appraisal, the commission found that 'for rate-making purposes obviously only a proper proportion of the cost of the gas-holder (and accessories)' is to be taken into consideration in reaching a reasonable conclusion as to an equitable total valuation of the gas property in Springfield'; but the commission does not state what portion of the value is equitable, or what allowed on this item of property towards the total valuation of the gas property of appellant. It is not necessary that every article of property be separately valued but where it appears from the finding of the commission that only a certain proportion of the actual value of the whole, or any considerable part of the property of the utility, is to be taken into consideration, then such value must be stated by the commission, or the proportion considered must be stated; otherwise, this court will be helpless in an effort to review the reasonableness of the commission's findings and order. It is impossible from the state of this record to determine whether or not a just proportion of the value of this holder was allowed in determining the total value of all the gas property of this utility.

#### 340—Rate of Return

"The commission fixed as a fair rate of return upon a fair value of appellee's used and useful gas property in Springfield 7 per cent. per annum. It is not seriously contended that this is not a reasonable rate of return, and we think the authorities support the finding. What is a reasonable return is a question of fact, the solution of which calls for the exercise of sound judgment and common sense. *Duluth Street Railway Co. v. Railroad Com.*, supra. Ordinarily the utility is entitled to a rate of return not less than the legal rate of interest. *Brymer v. Butler Water Co.*, supra. There is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality. Among other things, the amount of risk in the business is a most important factor, as well as the locality

where the business is conducted and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. We do not think the action of the commission in fixing this rate was arbitrary or unreasonable. This conclusion finds support in *Wilcox v. Consolidated Gas Co.*, *supra*.

The Court concludes:

"The questions presented in this case are largely questions of business judgment, and no rule can be laid down which can be applied mathematically to every situation. Each case must rest largely upon its own facts. We are aware of the grave character of the questions with which we have had to deal and of the great injury, not only to private interests but to the public at large, that may result from error. The same may be said of any legislative policy in matters of moment. We have dealt with the legal principles underlying this case, but the ultimate question is a question of business, and results cannot be predicted. In such a case the commissioners ought to move with caution. An unwise administration of regulatory laws will drive capital from this field and bring on public calamity by causing the utilities to cease to function. It is equally important to the public and the utility that the rates established be just and reasonable.

"For the reason that the commission wholly excluded from its consideration that element of value known as going value, and for the reason that the commission has not indicated what portion of the value of the 1,000,000-foot gasholder was considered by it in reaching the value of the gas property of the appellant, the circuit court properly set aside its decision. But the circuit court erred in not remanding the cause for further proceedings. The judgment of the circuit court of Sangamon county is therefore modified by remanding the cause to the Public Utilities Commission for further proceedings in accordance with the views hereinbefore expressed, and the judgment so modified is affirmed."

## REFERENCES

### RATES

#### 224—Rates

Fares Are Seeking High Level, by Harlow C. Clark. A.E.R.A. February, 1920, p. 783, 31 pages.

The writer discusses increases in fares made in 1919, and the conditions in all cities having a population of more than 25,000, as they now exist. He says:

"Increased fares in some form or another are now effective in all but 56 of the 273 cities in the United States having a population of 25,000 or more. The cash fare in 196 of them is more than five cents, in 118 of them more than six cents, in 64 of them more than seven cents, and in 34 of them more than eight cents.

"In all but 15 of the 68 cities, with more than 100,000 population, the cash rate is more than five cents; in 40 of the 62 cities between 50,000 and 100,000, it is more than five cents, and in 103 of the 142 cities having less than 50,000 it is more than five cents.

"In Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, North Carolina, Oregon, South Carolina, Rhode Island and Virginia the fares in every city of more than 25,000 have been increased. In Michigan and Pennsylvania, the fares in all but one city have been increased, while of New York's 22 cities having more than 25,000 but two remain without some form of increase. \* \* \*

"In 150 of the 217 cities in which fares have been increased, the increase has been the result of the action of State commissions, in 44 of municipal authorities, in two of courts and in 21 of automatic regulation under service at cost plans.

"In Minneapolis and Denver, ordinances embracing service at cost principles have been defeated by the electorate. In Rochester, St. Paul, Toledo, Oakland, Syracuse, Norfolk, Berkeley and Alameda service at cost plans have been proposed. In Detroit and Duluth public ownership proposals have been defeated by the electorate. In Detroit the building of a competing line has been proposed and in Toledo a proposition to purchase the existing system will be submitted to vote."

Tables of the rates of fare in effect in the cities of the United States having a population of 25,000 or more are given, together with a statement of the specific situation in each city.

## COURT DECISION REFERENCES

### 310—Valuation

Potomac Electric Power Company v. Public Utilities Commission of the District of Columbia. Decision of the Supreme Court of the District of Columbia, Dismissing the Complaint in Its Review of the Findings of the Commission as to the Value of the Company's Property. March 2, 1920.

This is a bill in Equity, filed by the Potomac Electric Power Company, Incorporated, against the Public Utilities Commission of the District of Columbia, for the review of the Supreme Court of the findings of the Commission in the matter of the valuation of the property of the Power Company, filed May 2, 1917. (Reported in 11 Rate Research 103-109 119-124, 135-142.) The Court says:

### 242—Hearings

"A thorough review of the work done by the Commission in this case serves to emphasize the wisdom of applying to its findings the rules laid down by the United States Supreme Court in determining the weight to be given them. \* \* \*

"At the outset of the consideration of the important questions involved it is necessary to ascertain with exactness the jurisdiction possessed by this Court under the statute. It does not admit of question that any rule laid down by the Supreme Court in similar cases should be followed by this Court. \* \* \*

"While the greater number of the cases deciding the question were rate cases, the principle is equally applicable to valuation cases. Perhaps no case ever before the Courts involved the same necessity of a clear rec-

ognition and application of it to the findings of the Commission as the instant case.

"The limitation of the Court's rights to review the findings of the Commission, as determined by the Supreme Court of the United States, renders a detailed discussion of the evidence in the instant case unnecessary, even if it were practicable, and a general analysis of the decision of the Commission will be sufficient to indicate the grounds upon which my conclusions are based.

"It may be stated, however, quite broadly, that if the testimony adduced as to the value of the Power Company's property by both the witnesses for the latter and for the Commission was to be weighed as in an ordinary civil case I would find not only that the conclusions of the Commission as to the historical value of the property were sustained by substantial evidence, but by a preponderance of the evidence. This conclusion does not include certain specific items, which the Power Company claims should have been included in making up the value of its property and which were excluded by the Commission, as to which the evidence is not in substantial dispute, and where the conclusion of the Commission might be said to be a matter of law. Such of these items as are important will receive separate consideration hereinafter."

It was insisted by counsel for the Power Company that the Washington Railway and Electric Company, by virtue of its ownership of all of the stock of the plaintiff and of certain contractual relations alleged to exist between it and the Power Company, and because it had guaranteed certain obligations of the Power Company, had a right to be made a party defendant in the cause; it also was insisted on behalf of the Power Company that a proper construction of the Act of Congress of June 5, 1900, entitled the Washington Railway and Electric Company, by reason of the ownership of the stock of the Power Company, to have electric light rates fixed with reference to deficiencies in the earnings of the Washington Railway and Electric Company.

The Court says:

"Neither of these contentions can be sustained. The Public Utilities law in specific terms made it the duty of the Power Company to furnish its services at a reasonable cost, and that reasonable cost is to be determined, according to repeated decisions of the Supreme Court of the United States, by the return which the Power Company is entitled to receive upon the fair value of its property, and the amount of this return is not to be affected by the financial needs or difficulties of another corporation, performing a dissimilar service, even if the latter is the owner of the entire capital stock of the Power Company. In addition to this, the Act of Congress of June 5, 1900, specifically prohibits the Washington Railway & Electric Company from acquiring or owning the whole or any part of the property or franchises of the Power Company. For these reasons, the Commission did not err in refusing to permit the Washington Railway & Electric Company to become a party respondent, nor did it err in holding that the duty of the Power Company under the law was to furnish its services at a reasonable cost to consumers regardless of its connections through stock ownership or otherwise with any other public utility.

### 310—Valuation

Some question was made in the argument by one of the counsel for the plaintiff, the Power Company, as to the character of the valuation which the Public Utility Law directed to be made.

The Court says:

"There is no doubt in my mind that the valuation contemplated by that

law was one for the purpose of determining rates and services. Section 2 of the law provides:

"That every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable; the charge made by any such public utility for any facility or service furnished or rendered, or to be furnished or rendered, shall be reasonable, just and non-discriminatory. Every unjust, unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful order of the Commission created by this Section."

"It is self-evident that the only method by which the Commission could determine whether a charge was reasonable or unreasonable, or whether a service was adequate or inadequate, was by determining the fair value of the property upon which the utility had a right to receive a reasonable return, and this was done by the Commission. \* \* \*

"The fair value to be found by the Commission under the terms of the Public Utility Law for rate-making purposes, in my opinion, and I so find, means the actual, necessary and reasonably true investment in money or its equivalent made by the utility for the purpose of the exercise of the public duty it owes under the public grant which it enjoys. This investment covers the cost of the property used and useful in its operation, the reasonable value of any property dedicated to it by private persons for this public use and such unearned increment from its property holdings of real estate as may have accrued to it through any general rise in real estate values. It covers and includes every legitimate expenditure made and properly chargeable to its capital account, provided it has written off all property that has ceased to exist or passed from use from any cause, and depreciation has been properly provided for. A public utility is not, and under the law cannot be, considered in the nature of a speculative enterprise. The persons, whether as individuals or as partners or in a corporate form, are under no obligation to themselves or to the public to invest their capital in any public utility. Having done so, however, they have under the law, and by a principle which was announced by Lord Hale in England, centuries ago, the right to a fair return upon their actual investment and to nothing more. If risk and danger be attached to the enterprise at its inception, the law gives them the right to a larger return because of the risk encountered, but not the right to a larger valuation for this reason, and when the period of risk is passed and the enterprise is safely established, the law reduces the rate of return to a fair and reasonable percentage upon the fair value of the property to be ascertained upon a consideration, not of the rights of the investor in the utility alone, but upon the rights of the public whose patronage is the prime factor in the success of the enterprise. In my opinion, there is no other just and reasonable principle upon which a rate base can be determined in the case of a fairly normal utility operating under fairly normal conditions. These conclusions are to be read, in one form or another, in repeated decisions of the United States Supreme Court, beginning with *Munn vs. Illinois*, 94 U. S. 113, which has well been called a 'Landmark in the Law.' \* \* \*

"The method of ascertaining fair value depends upon circumstances, and frequently, as in this case, the ascertainment of the historical cost of the property is combined with its reproduction cost, less depreciation, and these are considered in the light of those other elements of value specified in *Smyth v. Ames*, 169 U. S. 466, and other decisions of the Supreme Court of the United States.

### 312.8—Discarded Property

"A great deal was said in the argument with reference to certain eliminations, amounting to \$144,285.75. This amount is the residue of a consider-

ably larger sum representing the cost of many items of property which, from the evidence, had disappeared from the tangible property of the Power Company or had become no longer used nor useful. It appears that the Commission, after weighing the Power Company's claims for the restoration of the entire amount originally eliminated by the Commission's accountant, did restore the larger portion, leaving \$144,285.75 referred to. These eliminations were justified by substantial evidence, and when it is remembered that the fair value of the property of the plaintiff as found by the Commission as of July 1, 1914, is more than \$1,300,000.00 greater than the amount found by its accountants as the undepreciated historical cost of the property, and over \$1,000,000.00 in excess of the Commission's finding for the same item, it will be seen that no injustice resulted from this action of the Commission. \* \*"

### 313—Unit Prices

The Company contended that the Commission in making its estimate of reproduction cost as of July 1, 1914, committed error; that the reproduction cost should have been taken as it was by the expert for the Company, in his report as of July 1, 1916.

The Court says:

"To this I cannot agree. Reproduction cost less depreciation is but one of the elements of value, and in my judgment ordinarily only a negative element, to be considered in the final determination of fair value. Its use is to throw light upon the actual amount invested, and this can only be done where the reproduction cost is determined as of a fairly normal period. It would lose all value if made as of an abnormal period when prices were abnormally low or high. To be of any assistance or real use it must be made as of a normal time and the unit cost applied thereto should extend over a sufficient number of years to show a normal trend of prices. \* \* \*

"The date adopted by the Commission in this case was as near a normal date as it was perhaps possible to get; the unit costs applied to the inventory were determined after a consideration of the trend of prices given by the witnesses, and the Commission added five per cent to the entire reproduction cost of the physical property as found by its engineers. As already indicated by the quotation from the opinion of Judge Hughes, the fact that prices of labor and material on account of the war in Europe advanced to great heights with a rapidity and to an extent never before experienced from about the first of January, 1915, to the time of the valuation, has no bearing whatsoever upon the cost of reproduction as a factor in a valuation for rate-making purposes. The Commission would have committed a grave error, unjust to the public, and destructive of the value of the reproduction cost as an element in a valuation case of this character, to have attempted to find normal prices based upon either current prices as of July 1, 1916, or upon normal prices then or thereafter as claimed by the Power Company. Such a course would have greatly impaired the reproduction cost estimate as one of the elements of fair value. The adoption by the Commission of the date of July 1, 1914, as to which the inventory was to be made and normal unit prices applied, was reasonable and proper, and its action in so doing has the sanction of the highest legal and engineering authorities.

"It is unnecessary to analyze the findings of the Commission as to the costs of preliminary operation, financing, pre-organization expenses, brokerage and commission, and kindred items so far as reproduction cost is concerned. These hypothetical costs based upon an hypothetical reconstruction of the property the Commission allowed for in its final finding of fair value in such sums as under the evidence in the case and the exercise of reason-

able judgment it thought proper, and I find no error in its conclusions in this respect.

#### 314.5—Interest During Construction

"There was a wide disparity between the witnesses for the Commission and those for the Power Company in regard to the amounts to be allowed for interest and taxes during construction. This resulted from the fact that the Commission's engineers conceived the erection of this hypothetical plant upon one basis and the engineers of the Power Company upon another basis, and the time of construction adopted by the engineers of the Power Company was two years longer than that of the Commission's engineers. The determination of the question involved in this particular was for the good judgment and discretion of the Commission, and in its exercise no reversible error appears. The testimony was conflicting as to what allowance should be made for working capital and supplies, and as the finding of the Commission was based upon substantial evidence I have neither the right nor the disposition to substitute my judgment for that of the Commission.

#### 314.1—Promotion

"The Power Company claimed as an item of reproduction cost the sum of \$650,000.00 for 'compensation to conceivers.' This claim also is derived from a percentage applied by the Power Company's engineer Almert to his reproduction cost of the physical property. It is a purely hypothetical cost, based upon the hypothetical reconstruction of the property, and is asserted upon the theory that some such amount might be required to be paid to some promoters or conceivers as compensation for the suggestion that a plant similar to that of the Power Company's should be constructed in Washington under the assumption that the existing plant was non-existent either on the first of July, 1914, or on the first of July, 1916. It appears from the evidence that the Power Company is not the company which established and developed the electric light and power business of the District of Columbia. The United States Electric Lighting Company developed this business and at the time it was taken over by the Power Company, it was the result of slow evolution from a very small initial concern, and it is exceedingly unlikely that any cost whatsoever in the nature of a conceiver's commission or a promoter's commission attached to the enterprise. The business was developed slowly but successfully for fifteen years before its acquisition by the Power Company, and there is not the slightest evidence in the record that any such cost was ever paid by it. To hold that the public is to be charged with such an amount, which is a pure figment of the imagination, unsupported by any evidence, is without justification either in law or fair dealing, which latter the public utility owes to its patrons. The Commission properly disallowed this item.

"In the estimate made by Almert, the engineer of the Power Company, a claim of \$2,115,323.00 was made for what he called development costs, under his reproduction theory. This figure was arrived at by applying an arbitrary percentage to his reproduction cost of the physical property of the Power Company. The theory upon which such a claim was based seems to be that during a certain period of the Power Company's existence it must have incurred losses incident to the expansion of its business, either by obsolescence caused by change of construction or advancement of the art or because of securing the patronage which it now has. While it is true that such costs might attach under a purely hypothetical construction, yet when they are claimed as a basis upon which consumers are required to pay, not an hypothetical but an actual return, there should be at least some evidence that they actually did occur in the existing plant. The records of the Power Company show that the net earnings of the United States Electric Lighting Company up to the time of its acquisition by the Power Company

and of the combined companies since that time have been more than sufficient to cover any such claim. All costs of attaching the business, so far as they were shown by the books and records of the Power Company, were allowed, and no actual expenditure appears in the testimony upon which a claim could be granted. The Commission in considering the question of development losses took the position that there was no justification for the large claim made by the Power Company, yet that it was proper to make some allowance for this element of value in its final finding of fair value, and that it made such allowance is evidenced by the fact that in its final finding of fair value as of July 1, 1914, it allowed \$1,137,157.00 more than the cost of reproduction less depreciation found by its engineers.

### 314.22—Franchises

"The Power Company further claimed that it had a right to include in the present fair value of its property the sum of \$2,500,000 for what it designated as its easements in the public streets. Whether the privilege to use the public streets which the Power Company possesses should be called a franchise, a privilege, or an easement, is of no consequence. The Power Company claims that its actual occupation and use of the streets under this privilege gives it an easement therein, and gives to this easement a separate and distinct value which it has a right to capitalize as against the public. To claim that these so-called easements which cost the Power Company nothing, without which it could not perform its public duty, and which it is allowed to exercise to enable it to do so, can be capitalized against the consumer of its product in any sum whatsoever is to make the public use destructive of the public right and effect a result which should not be tolerated, by any judicial tribunal. Without passing upon the question as to whether or not these so-called easements would be property rights if the property of the Power Company were to be condemned and taken by public authorities, or if the Power Company, being thereunto authorized by Congress, should effect a sale of its property to another company, it is sufficient to say that there should be no capitalization of an item of this character in a valuation made for the purpose of determining rates. \* \* \*

The Court concludes:

"Fair value for rate-making purposes is necessarily expressed by some amount, and this amount, or fair value, constitutes the rate base. The objection that the Commission was finding 'a fair amount' and not a 'fair value for rate-making purposes' is without force, as the terms as used by the Commission are similar in meaning and effect.

"The final result of the work of the Commission in its finding of fair value as of July 1, 1914, was to fix that value as of that date at an amount \$1,300,000.00 greater than that found by its accountants as the historical cost of the property and \$1,137,000.00 greater than the cost of reproduction less accrued depreciation as found by its engineers. It found the fair value as of July 1, 1914, at \$10,250,000.00, and added thereto at the actual cost thereof all net additions to capital from that time up to the date of the valuation, determining the fair value as of December 31, 1916, to be \$11,231,170.43. The Commission valued the property as a going concern (as) in successful operation. In my opinion, its procedure was logical, lawful and without prejudice to the Power Company, and that its conclusions were reached after careful and impartial consideration of all the evidence and data before it, and should be sustained.

"I therefore overrule all exceptions taken by the plaintiff to the rulings of the Commission during the course of the hearing, and all exceptions to the findings which have been insisted upon before this Court, and direct that a decree be entered dismissing the bill of complaint herein exhibited."



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# Rate Research

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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### INDIANA

#### 300—Investment and Return

La Fayette Telephone Company, Application for Authority to Increase Rates. Decision of the Indiana Public Service Commission, Granting an Increase. December 5, 1919.

The La Fayette Telephone Company filed with the Commission a petition for authority to increase rates, alleging that the present rates do not produce sufficient revenues to meet present abnormal operating expenses and provide for taxes, depreciation and a fair return upon investment.

#### 310—Valuation

The Commission found that the present fair value of the property was \$550,000 allowing \$25,000 for contingencies, omissions, engineering, superintendence, interest, taxes and insurance during construction, and going value; that deducting \$8,000 for depreciation expenditures improperly charged to the maintenance account, and including \$25,000 for reserve for depreciation and \$13,500 for increases in wages, but excluding approximately \$1,200 paid as federal income tax, the estimated operating expenses for 1920 would be \$117,146; that including a return of 7 per cent, or \$38,500, would give a total amount of revenue required of \$155,500; that deducting \$16,000 received from tolls, public pay stations, messenger service, directory advertising, rents and other miscellaneous revenues, would leave \$139,500 gross revenue to be derived from subscribers' earnings.

#### 315.1—Going Value

In its discussion of "going value," the Commission says:

"During recent years, commissions, courts and valuation experts have sought to define going value and to enumerate its constituents. Many of them, perhaps the larger number, have held that unrequited early losses constitute the controlling element. Others have held that the cost of attaching or establishing the business is the better guide. More recently still, others seem to have abandoned the theory of

unrequited early losses, and cost of establishing business, and to have departed entirely from the theory of allowing a going value to compensate for out-of-pocket money prudently spent during the period of construction and development, for invisible assets or for reasonable losses suffered before the business became remunerative. These later authorities hold that regardless of historical consideration, every utility which is successfully managed has modern facilities, and is operated with efficiency and economy has a going value in excess of the value of the physical property, regardless of the method of determining physical value, whether it be based on cost of reproduction new at present prices or on investment. Mr. Hagenah, the city's expert, whose judgment is entitled to consideration, typifies the exponents of the latter theory. He testified as follows:

"I think, Mr. Commissioner, that every public utility that's well managed, that has a modern plant, keeping up with service demands has a going value, irrespective of how much profit, or how much loss it may have. The very fact it has built up a good business creates an element of going value to which I think some consideration should be given, even though the business has been very profitable."

"While not unmindful of the fact that many courts have accepted this theory, the Commission views it as a complete departure from the established principle of measuring and compensating the utility for necessary investments which later are not reflected in appraisable property; that the adoption of this theory throws the finding of value into a field of speculation, unrestricted by definite limitations, and limited only by whim or fancy. The proponents of this theory have yet to formulate the specific considerations by which they would arrive at the amount of going value to be allowed. Of course, it may be replied that the whole question is a matter of judgment. Yet, after all, if judgment is to be anything more than speculation, it must rest upon measurably definite and weighted considerations.

"Doubtless there may exist a going value of this character for purposes of sale, but to base going value on such an elusive theory in a valuation for rate-making purposes, is but to disguise 'commercial going value,' which is closely akin to the universally disallowed element of good will.

"Successful management, modern facilities, and economical and efficient operation should not be penalized, they should be encouraged and rewarded. But they should be encouraged and rewarded directly by increasing the rate of return rather than by indirection through the illogical creation of mythical value.

"If the standing of a utility, the success of its business, the standards of its management or the efficiency and economy of its opera-

tion are to be determining elements in measuring going value, then going value becomes a variable quantity. This year's successful and well managed utility which is efficiently and economically operated, may within a short time deteriorate into a utility that is ill managed and inefficiently operated, thereby losing its going value as measured by such standards. In the case of the utility of large property values where going value thus measured has been capitalized, this loss would necessitate a substantial reduction in its asset account, thereby impairing its financial standing and reducing the value of its securities.

"From the standpoint of both the utility and the public, the Commission believes that the logical and equitable basis for going value is to be found in the principle of allowing for capital expenditures which are not represented in the physical property, prudently made, and of relying on unrequited losses and the cost of establishing the business, as the most reliable measure of such expenditures. The Commission will abide by the principles laid down by the courts, but in so doing is constrained to this expression of doubt as to the wisdom and equity of this recent conception of going value, which holds that every utility has a going value in excess of the value of its physical property.

"In the instant case, there is no showing of early or unrequited losses, or of any capital expenditures for establishing and attaching the business. In fact, the evidence discloses that any sums spent since 1903 for such purposes have been paid as operating expenses without loss or impairment of dividends to stockholders. While there is no showing as to the history of the company prior to 1903, it may reasonably be assumed that in the original construction of the property and prior to the establishment of its business, there were expenditures of this nature. It is difficult, however, to conceive of substantial sums so expended. Consequently, no substantial allowance for going value is justified."

## WISCONSIN

### 300—Investment and Return

Application of the City of Algoma, As a Public Utility, for Authority to Increase Its Electric and Water Rates. Decision of the Wisconsin Railroad Commission, Granting the Application. November 28, 1919.

The City of Algoma filed on October 18, 1919, an application requesting that the Commission grant it authority to make a substantial increase in its electric and water rate schedules. It is alleged in the City's petition that the present schedules of rates are inadequate in that sufficient revenue is not afforded to meet the requirements for

the cost of operation, maintenance, and replacements, and allow any return upon the investment in the two utilities.

Tables are submitted setting forth the operating revenue and expenses for the last two years for the electric department and the water department. A combined statement of the income of the two departments showing the results of operation as a joint utility is also given. The Commission says:

#### 352—Expense

"It appears that the City of Algoma, for the year ending June 30, 1919, collected \$16,141.99 as an operating revenue in the electric and water departments and paid out as an actual operating expense \$16,657.92, thereby showing a loss of \$515.93. This deficit results before any provision is made for depreciation or interest upon the City's investments in the two utilities.

"Estimating the depreciation of the electric property at 5 per cent and the City's return upon its investment in that property at 5 per cent, we find that the amount available for these two items after deducting the operating expenses should be about \$2,564.00. In the water department this amount, which should be available for depreciation and interest, should be about \$2,172.00, estimating the depreciation at 1 per cent and the rate of return at 5 per cent. The City should, therefore, have had about \$4,736.00 available in 1919 for depreciation and interest in the two utilities. The report shows that there was an actual deficit of \$515.00. In order to meet its direct operating expenses, depreciation and interest requirements, the revenues of the two utilities should have been about \$5,251.00 greater than they actually were for this period of time. This calculation does not take into account any allowance for taxes which the City would have received if the utilities were privately owned and operated.

"In the year 1918 the electric department was almost self-sustaining, according to the income statement set forth above. In 1919 the electric department did not make as favorable a showing. In neither one of these years did the water department revenues show an excess over the operating expenses allocated to it. In the operation of a joint utility of this character it is necessary to make certain arbitrary apportionments of operating expenses. It has been the custom of the City to charge practically one-third of the operating expenses to the water department and two-thirds to the electric department. A detailed and careful cost analysis might show a slight variation from this arbitrary method. We do not think, however, that the difference found would be of sufficient importance to change materially the conclusions which we find. For the purpose of this proceeding, we feel that the apportion-

ments made by the City Authorities in the annual reports can be reasonably well used.

### 630—Cost of Supplies

“The Testimony at the hearing showed that on July 1, 1919, wage increases were made which amounted to \$55 a month or \$660 a year. The present price of coal is not appreciably different from what it was last year—it may be a trifle lower unless the labor controversy in the bituminous coal fields will result in a further increase in the price of coal at the mine. The increase in the price of coal in 1919 over 1918 accounted for a large part of the increase in operating expenses for that year. It appears that the City has to pay from \$60 to \$66 a month for hauling its coal from the car to the plant, which is but a short distance. The superintendent estimated that the construction of a railroad track for about 175 feet would eliminate the necessity of teaming the coal and thus relieve the plant of this monthly hauling or cartage charge. He thought that about \$500 would pay for the cost of this railroad track extension. This is an improvement which the City should make at its earliest convenience. When completed the savings made in the cost of carting the coal will at least offset the increase in wages which have been made since the first of July. There may be other increases in the costs of operation over the 1919 figures which we have not taken into account. On the whole, we feel quite safe and fairly conservative in basing our calculations upon the operating costs as reported for this past year.

### 720—Rate Schedules

“The City in its application proposed to increase its energy rates for commercial lighting from 11 cents to 12 cents per K.W.H. and an advance in the minimum monthly bill from 50 cents to \$1.00. Both of these proposals appeal to us as reasonable and fair. Considering the fact that the consumers are afforded all-day service and the greatly increased costs of operation, we feel that this increase in the minimum rate is justified. A lighting rate of 13 cents per K.W.H. must also be considered as a very fair rate for this character of service. We estimate that these changes in commercial lighting rates will result in a probable increase in yearly revenue of between \$500 and \$600.

“In its proposed rate schedule, the City outlines a rather complex schedule of power rates. An analysis of consumer data has been made and according to it the increase in revenue from power consumers would be under the proposed rate only about \$150.00, based upon last year's consumption. In a great many cases the bills would be an actual reduction. This fact was called to the attention of the superintendent of the plant, and at a conference with him it was decided that the type of the present power schedule should

be retained but an increase be made in the energy rate. A net rate of 8 cents for the first 300 K.W.H. was suggested, 6 cents for the next 700 K.W.H. and 4 cents for all over 1,000 K.W.H. consumed in one month. The application of this schedule results in an increase of about \$700 over the revenue derived from power consumers in 1919. This increase of one-third in the power rates may be considered reasonable and fair on account of the increase in the cost of all energy-producing fuel and the fact that the power load is small and the plant is operated during the day almost wholly for the benefit of this limited number of power users.

"The proposed 15 per cent increase in street lighting rates will result in a further charge of \$457.36 per year which the City will have to meet. For the larger size lamp, this will mean an annual rate of \$97.75. A strict cost analysis might not justify such a high rate, but the City, in proposing it, probably feels that this charge is simply another way of absorbing a deficit.

"Most of the water consumers pay the minimum quarterly bill. The increase in the minimum of \$2.00 a year and the increase in the quantity rate will, in our estimation, result in about \$500 additional revenue. The advance of 15 per cent for municipal service will amount to \$358.80 increased charges. Considering the situation in the water department, these increases appear justified.

"As near as we can estimate, the schedule of rates authorized herein will give the applicant about \$2500.00 additional revenue over what the joint utility enjoyed for the year ending June 30, 1919. Instead of showing a deficit there will be about \$2000 available for interest and depreciation. This is still a great deal less than the amount to which the applicant is entitled. The City has to meet \$1090 yearly interest charges; the annual depreciation on the two utilities is about \$1600. It appears then that even under these new rates the City will not be able, after paying operating expenses, to meet the interest charges on the outstanding bonds and have enough left over to meet the full estimated depreciation charges.

"The Commission finds that the present electric and water rate schedules of the applicant are unremunerative and cause a direct loss to the City; that the rates authorized herein are not excessive in any way. The City's representatives requested that the gross rates and the net rates be authorized in the electric schedule and that the difference be regarded as a discount for prompt payment. The need for this is recognized and the order will provide for such a schedule of rates.

"In order that operating expenses of the plant may be reduced, it is recommended that the City take the proper steps to extend the railroad side track to the plant and thus eliminate the cartage charges."



## NEW YORK

## 224—Rates.

South Brooklyn Railway Company, Application for Authority to Increase the Rates for a Special Freight Service Furnished to Certain Newspaper Companies. Decision of the New York Public Service Commission (1D), Granting an Increase. December 30, 1919.

This was a hearing to inquire into the propriety of an amendment to the tariff schedule of the South Brooklyn Railway Company, increasing the rates for a special freight service, furnished to certain newspapers and to one newspaper, in Brooklyn.

The Company contends that under the present rate it is performing the service at a loss, and to substantiate this, presented figures showing the revenue cost, mileage cost and crew cost for the months of July, August, and September, 1919.

Commissioner Barrett, in his opinion, says:

"The details of the company's computation were not given at the hearing; but the report of the accountants of the Commission, based on inquiry and analysis, convinces me that, on any reasonable basis or method of computation, the company under its present rate, is rendering the service at a loss. Indeed, this was conceded by complainants who, although feeling that a 100% increase in rates was too high, made no objection to a 60% increase, and suggested that the Commission determine the actual amount of increase which would be reasonable. \* \* \*

"After weighing all the facts and considerations bearing upon the question, I have reached the conclusion that, while the company has shown that it is entitled to a very large increase, larger probably than the 60% increase conceded by complainants, it has not sustained the burden of proof in showing that the full amount of the proposed increase is reasonable. It appears that its mileage cost is too high, and it does not appear that so large a rate of return is reasonable. It is true that the testimony was that crew cost has increased about 150 per cent. since the present rates were established; but it is evident from the proportion between crew cost and mileage cost that an increase in crew cost would not justify anything like a corresponding increase in freight rates. Without being able to fix the exact amount of increase, for the reasons above stated, I am of the opinion that while the present rates are unreasonable the proposed rates have not been shown to be reasonable, and that the proper rate is something higher than a 60% increase but something lower than a 100% increase.

"The inherent difficulty of determining what rate is reasonable for a special class of service, together with the rule against allowing an

increase to go into effect, until the company sustains the burden of proof, undoubtedly results in a situation which cannot be met if extreme claims are insisted upon and pushed to their logical conclusion, and which calls for moderation and an honest spirit of co-operation. Where increases of rate are filed, the Commission, of course, cannot be expected to ignore the rules and standards prescribed by law. On the other hand, it is hardly reasonable to expect that a company should be required to present a valuation of its property in order to be permitted to put into effect a change in rate for a special service which comprises so small a portion, comparatively, of its total business. Such situations call for practical adjustments, and will be I believe, capable of being met if the companies will be content at the start with moderate and tentative increases. If this course be pursued, the question as to whether the burden of proof has been sustained may be presented in a less extreme form, and the experience with the actual working of the rate may afford a basis upon which the adequacy of the increase may be more satisfactorily determined.

"I recommend that the increase proposed in the new tariff schedule be disallowed, and that the company be directed to withdraw and cancel its proposed schedule, without prejudice to its right to file other schedules."

## WISCONSIN

### 531—Prompt Payment Discount

Seymour Electric Company, Application for Authority to Change Its Discount Period. Decision of the Wisconsin Railroad Commission, Granting the Application. November 6, 1919.

The present discount period which extends to the 28th of the month is undesirable for the Seymour Electric Company and authority is requested to terminate this period on the 10th day of the month. The Commission says:

"The primary reason for allowing a discount for prompt payment is not to obtain additional revenue through late payments but to encourage early payments with resulting advantages to the utility. With this in mind, the discount period extending to the 28th of the month does not insure the prompt payment of the large portion of the utility's revenue. The practice quite general throughout the state is to terminate the period for discount on the 10th of the month following the period for which the bill is rendered. There has been little or no complaint regarding this.

"One of the most important factors in the operation of a public utility is the management. Scrupulous care must be exercised at all times to maintain operation at its best point and to prevent a

waste of money through unnecessary or unreasonable expenditures. This is a particularly difficult and arduous task in periods of rising costs and increasing effort must be made in order to prevent losses to the utility. A tenet of good management therefore requires a utility wherever possible to discount its own bills. As in a great many cases these are rendered on the first of each month and carry a ten-day discount, the utility should have the funds to meet them before the period of discount expires. The amount of working capital to do this when the revenue is not available would usually be undesirably large. For this reason the bulk of the revenue should be available early in the month.

"In so far as fairness to the consumer is concerned, it is well known that a great many commercial organizations extend but a ten-day discount period and, in the case of a utility which of necessity must deliver service for a month before the billing, a ten-day discount period cannot be considered unfair or unusual. The billing, for service by the utility, moreover, is an item which may be considered as approximating a rental, as it is of periodic occurrence and can be estimated at any time by reading the meter and applying the authorized rates. Provision can then be made for its payment.

"It further appears that the present management of the company (the company has changed ownership recently) has been until lately unaware of the present discount rule and has been billing customers under the proposed and almost universal ten-day discount rule. An order authorizing this will be issued."

## REFERENCES

### PUBLIC SERVICE REGULATION

#### 268—Public Service Laws

Wyoming Public Utilities Act. Pamphlet. 29 pages. March 1, 1920.

The Public Service Commission of Wyoming has published in pamphlet form a compilation of the laws of the State of Wyoming known as the Public Utilities Act, including all amendments to date of March 1, 1920.

#### 226.2—Extension of Service

Data on Rural Line Extensions. Wisconsin Electrical Association—Committee on Rural Line Extension. Electrical Review. April 3, 1920. p. 561, 3¼ pages.

On November 21, 1919, the Railroad Commission of Wisconsin held a conference on the subject of extensions of rural electric lines, the discussion showing the need of developing a definite policy regarding such extensions. Suggestions were made that the Railroad Commission co-operate with the Wisconsin Electrical Association and the outcome was the appointment by the latter organiza-

tion of a Committee on Rural Line Extensions, with G. C. Neff, Wisconsin Power & Light Co., Madison, as chairman. A number of conferences were held and investigations were made of representative rural line extensions, data being obtained on installation costs, operating conditions and income received by the utility companies for such service. This information was tabulated.

A study of the tables and other information presented shows that in nearly every case the revenue obtained from the extensions was not sufficient to yield a fair return to the utility, even though in some cases the consumers have contributed somewhat to the cost of the line and have paid rates somewhat higher than city rates.

To remedy this situation the committee drafted a set of rules covering the handling of rural service by central-station companies. The rules covering the cost of extension and the rates for rural service are as follows:

"Rule 2. Cost of Extension Defined.—Estimated construction cost shall include all material, labor and other expenses required for the distribution and installation of poles, wire, crossarms, insulators, line hardware, switching and protective devices, transformers, appurtenances, right-of-way permits, etc. Metering equipment shall be supplied by the utility and cost of same shall not be included in the estimated construction cost.

"An item not exceeding 10 per cent. of material cost shall be included to cover purchasing expense, freight, cartage to storeroom and stores—department expense.

"An item not exceeding 15 per cent. of all above mentioned items shall be included to cover general overhead, engineering, promotion, office supervision, clerical labor, contingencies, etc. \* \* \*

"Rule 6. Rates.—The rates for rural service shall be (a) a rural charge plus (b) the regular urban rates.

"The rural charge shall cover the amount by which the fixed charges, energy losses and operating expenses incident to rural service exceed the corresponding items for city service. The annual rural charge for the extension shall be equal to 10 per cent. of the total construction cost of the extension plus the total transformer core losses per year computed at the utility's power rate minus  $13\frac{1}{2}$  per cent. of two times that part of the annual revenue from the extension which is computed at the regular urban rates.

"The annual rural charge of the individual consumers will then be determined as follows: 50 per cent. of the total annual rural charge shall be apportioned equally among the consumers, and 50 per cent. of the total annual rural charge shall be apportioned among the consumers according to installed transformer capacity. In case two or more consumers are served from the same transformer the installed transformer capacity for each consumer shall be considered as the estimated portion installed for the requirements of each individual. One-twelfth of the annual rural charge so apportioned to each consumer shall be billed monthly by the utility and paid by the consumer as the monthly rural charge.

"In addition to the rural charge the consumer shall pay the regular rates charged for service in the adjacent urban community where the extension originates. This charge will include all minimum service and demand charges which are a part of the urban rates.

"Rule 7. Annual Adjustment in Rural Charge.—Adjustments will be made in the rural charge at the end of each calendar year to allow for changes in the number of consumers, changes in revenue from line, changes in transformer capacity, etc., and the rural charge then fixed shall be effective for the following calendar year."

## COURT DECISION REFERENCES

## 617—Breakdown or Auxiliary Service

People ex rel. The New York Edison Company v. New York Public Service Commission, First District, and Acker, Merrill & Condit Company. Decision of the New York Supreme Court, Appellate Division, First Department. February, 1920.

Acker, Merrill & Condit has a grocery store and owns a building which it partly occupies and part of the building is occupied by its tenants. \*It has a private plant which generates electricity which it uses in its own store and sells to its tenants. It also sells electricity to other customers in the same block. It has applied to the relator, The New York Edison Company, to serve to it what is called break-down service. The relator is willing to furnish such break-down service to Acker, Merrill & Condit for its own use and for the use of its tenants on condition that Acker, Merrill & Condit will not use that service for the benefit of its customers in other buildings in the same block. The Public Service Commission has directed the relator to furnish such service without any stipulation to confine the use of the same to itself and its tenants. (Reported in 15 Rate Research 35-43.)

This break-down service is primarily a service for emergency. It is used in case the service of the customer breaks down. It is used also when very little electricity is required as upon holidays and Sundays and also at the peak of the service when a maximum current is required during the day. It is an important service to those furnishing their own electricity because it saves the expense of emergency equipment. It saves the necessity of stronger equipment which will always furnish enough electricity for whatever the demands may be, and enables the owner of the private plant to use the electricity of the relator when it is unprofitable to operate the private plant by reason of the small amount of electricity used in certain times of the day and in certain times of the year. For all these emergencies the relator, as a public service corporation, must be prepared and the electricity must be furnished at all times of day or night and on all days of the year, whether or not the amount used makes such service profitable to the relator. It enables an owner of a private plant to furnish the most of the electricity required by its tenants and its outside customers at a cheaper rate, and Acker, Merrill & Condit are furnishing electricity not only to its tenants, but to others in the same block at 15 per cent. less than the scheduled rates of the relator. The relator contends that in furnishing to those outside of its own tenants, Acker, Merrill & Condit is a competing company and therefore the relator should not be required to furnish to it break-down service, by which it is enabled to cut the price and sell for a less sum to those outside of its own building, although within its own block. If the furnishing of this service were required only as to this particular customer, the inequality would be slight, but there are six hundred and more private plants in the City of New York, and if this order is sustained, there is no reason why a private plant cannot be installed in every block in the City of New York and electricity furnished therefrom at 15 per cent. less than the scheduled rates of the relator, and the relator be required to furnish the auxiliary service for these emergency cases which costs more to them than the regular service because of the extra equipment necessary in order to be prepared to give this emergency service. The New York Edison Company, therefore, brings this suit asking the court to review the determination of the Public Service Commission, requiring the relator to promise break-down service to Acker, Merrill & Condit in the city of New York.

The Court, in reversing the determination of the Commission, says:

"In the 'Matter of Breakdown Service,' 1 P. S. C. Reps., 1st Dist. 130, breakdown service is defined: 'The service which an electricity supply company

renders when it provides a "connection" between its system and the installation of a consumer having his own electric plant, and agrees to stand ready to supply such consumer with current whenever his plant actually breaks down in whole or in part. As term is used, however, the term includes two other kinds of service: First, the service rendered by the supply company to the owners of private plants (both readiness-to-serve and current) during nights, Sundays, holidays and perhaps longer periods when only a small amount of current relatively is demanded; Second, a like service rendered by the supply company to owners of private plants during the peak period of the day—usually about 5 p. m.—when the consumption of current reaches its maximum for the day. These two classes of service are quite different and distinct from pure break-down service, they are really auxiliary service; but in common usage the three classes are included in the single term "break-down service." In that case the Commission held that the relator must supply such service to private plants and said: 'The private electric plants are not competitors, for they do not distribute current beyond their own premises.' \* \* \*

"But it is said that the relator is furnishing a similar service to other corporations under like circumstances and therefore cannot discriminate against Acker, Merrill & Condit, the petitioner before the Public Service Commission. The first case called to the attention of the Court is the case of the United Electric Light & Power Company, a public service corporation. But it was shown that that was not a rival company, but a company whose stock was owned by the same company that owns the relator's stock and was, therefore, entirely without the rule here stated. Furthermore, one company furnishes an alternating current and the other a direct current. They do not cut rates or otherwise compete, and all their profits go to the common owner of the stock of both companies. The next case cited is Best & Company. This company resells to other companies electricity which it purchases from the relator company at the regular rates. Best & Company has no private plant of its own. It is not, as is the case with Acker, Merrill & Condit, underselling the relator, and is not in competition with the relator, because all of the electricity sold by Best & Company is purchased from the relator. The third case is the sale to one Salmon. That sale is under what is known as the conjunctural rate schedule. In that case Salmon has no private plant. All of the electricity is purchased from the relator and is furnished to the owner of two buildings by Salmon, who is the owner or lessor of the two buildings within one hundred feet of each other and capable of service from one connection. It is a class of service offered to all who come within the limits of the class and is in no way in competition with the relator. The fourth case is the Perceval case before stated, where the customer made application and not the owner of the private plant, who was selling his service and when the owner of the private plant was held not to be a competitor.

"The evidence in the case by the witness Moses, who has charge of this plant for Acker, Merrill & Condit, and who is in some way financially interested therein, is to the effect that there is no other case where break-down service is furnished to the owner of a private plant which is in competition with a public service corporation. It thus appears that in refusing to Acker, Merrill & Condit this breakdown service, the relator was guilty of no discrimination, inasmuch as similar service was not given to any other customer under like conditions. Inasmuch as Acker, Merrill & Condit was a competing company the relator cannot be compelled in the absence of an express statutory requirement to furnish to them this breakdown service for the purpose of sale to outside customers.

"I have not referred to the contention of the relator that, because the petitioner is selling electricity to customers other than its tenants, it is an

electric corporation and subject to the supervision of the Public Service Commission, and, having failed to conform to the requirements of that law it has no standing in court to ask the interposition of the Commission. But this question it is unnecessary to decide. Whether or not the petitioner is an electrical corporation coming within the supervision of the Public Service Commission, it is perfectly clear that the statute intended to make a distinction between those corporations which were manufacturing gas or electricity for their own purposes, or the purposes of their tenants, and those who went further and assumed to sell their gas or electricity to outsiders. The main significance of that distinction would seem to be that while it is engaged in selling electricity to outsiders other than its own tenants, it has not the rights of the public to demand service upon payment of the legal rates, but it has only the rights that one public service corporation has as against another, which seems to be settled by the authorities cited and does not include the right to demand service of a competing company for the purpose of enabling the petitioner to undersell that competing company and take away its customers.

"The determination should therefore be reversed."

### 112.5—Ordinance Rates

*City of Lima v. Public Utilities Commission.* Decision of the Ohio Supreme Court. December 23, 1919. 126 Northeastern 318.

An ordinance of the city of Lima, duly passed, fixed the price that might be charged for natural gas furnished the consumers thereof in that city for a period of three years from and after September 1, 1918.

The Lima Natural Gas Company in writing duly signified its consent to and acceptance of such ordinance and declared its purpose to furnish gas thereunder, and did furnish gas to the consumers thereof in Lima, Ohio, under the terms and conditions set forth in such ordinance.

Thereafter, on May 29, 1919, said gas company filed with Public Utilities Commission its application for approval of its schedule of rates for gas therewith presented, which were the rates prescribed by said ordinance with the addition thereto of a "readiness to serve charge of thirty-five cents per month," the same to be effective from July 1, 1919. Objection to the approval of the proposed "readiness to serve charge" contained in said schedule, and to the consideration thereof by the Public Utilities Commission, was made by the City of Lima.

The city challenges not only the finding and order of the Commission wherein it approved the schedule filed by the Gas Company, but further challenges the jurisdiction of the Commission to hear and determine the application of the Gas Company for the approval of the readiness-to-serve charge provision in its schedule of rates.

The Court Says:

### 224.5—Rates Fixed by Contract

"For many years a statute has been in force and operation in this state substantially as now set forth in sections 3982 and 3983 General Code, authorizing the council of a municipality to regulate the price which electric lighting companies may charge for electric light or gas companies may charge for gas furnished to the citizens thereof and containing the further provision that when such prices are so fixed for a period not exceeding ten years and the company desiring to furnish electricity or gas assents thereto by written acceptance such company shall in no event charge more for electric light or gas than the price so specified, and the council shall not require the company

to furnish electricity or gas at a less price during the period of time agreed upon.

"The Constitution of the state as amended in 1912 (section 4, art. 18) expressly authorizes municipalities to enter into contracts for the product or service of any public utility, and it must be conceded that the acceptance by the utility company of the price and terms prescribed by an ordinance of a municipality completes a contract between the municipality and the utility company which is now authorized by the express terms of the Constitution. This Court held in the recent case of *Ohio River Power Co. v. City of Steubenville*, 99 Ohio St. 421, 124 N. E. 246, that where the price of electric current for light and other purposes is fixed by ordinance, and the company duly files its written acceptance thereof, such ordinance and acceptance constitute a contract between the municipality and the company, binding on both parties during the term named in the ordinance. \* \* \*

"The right to contract for the product or service of a public utility necessarily includes the right and authority to agree upon rates and charges. There can be no virtue in the right conferred upon municipalities to contract for the product or service of a public utility company if it is powerless to agree upon the rate or price to be paid therefor, or if, after such agreement is made, and during the period covered by the contract, its terms may be materially altered by the Public Utilities Commission. Aside from the proposition that the right to make such contract is now conferred by constitutional provision, it is to be borne in mind that the powers of the Public Utilities Commission are conferred by statute, and it possesses no authority other than that thus vested in it. *City of Cincinnati v. Public Utilities Commission*, 96 Ohio St. 270, 117 N. E. 381; *City of Washington v. Public Utilities Commission* 99 Ohio St. 70, 124 N. E. 46.

"The commission based its action upon the terms of section 614-17, Page & A. General Code, which provides, in substance, that 'nothing in this act' shall be taken to prohibit the public utility from providing any other financial device that may be practicable or advantageous to the parties interested, provided the same be filed with and approved by the commission. But it must be observed that it is expressly provided by section 614-47, General Code, that 'this act,' by which is meant the Public Utilities Act, of which section 614-17 is a part, shall not apply to prices fixed under sections 3644, 3982, and 3983, General Code, except as provided in sections 614-44, 614-45, and 614-46, neither of which confers any authority whatever upon the Public Utilities Commission to act where the utility accepted the rate fixed by ordinance, except in the event of a complaint being filed by the electors of the municipality, as therein provided.

"This court held in the *Steubenville Case*, *supra*, that by the provisions of section 614-47, General Code, such contracts are specifically exempt from the operation of statutes of this state defining the powers and duties of the Public Utilities Commission in relation to the rate, price, charge, toll, or rental that such public utility may charge, demand, exact, or collect for any service rendered or to be rendered by it. But, even if the rates and charges stipulated in such contracts were not specifically exempt from the consideration and action of the commission, the authority to enter into a contract such as that under review being now expressly conferred by constitutional provision, any statute which purports to modify or restrict the power thus conferred would be in conflict therewith and must fall.

"It follows that the exaction of the 'readiness to serve charge' incorporated in the schedule of rates filed by the gas company, in addition to the rate agreed upon, is violative of the terms of the contract, and that it cannot be validated by any order of the Public Utilities Commission. The order of the commission is therefore reversed."



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No. 4

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### IDAHO.

#### 228—Franchises.

Idaho Power Company, Application for Approval of Two Contracts Between Applicant and the City of Boise. Decision of the Idaho Public Utilities Commission, Holding That Applicant Add to the Charge for Service Rendered to Each Patron Within the Corporate Limits of the City of Boise, in Proportion to the Amount of Service Used by Each Patron, an Amount Sufficient to Aggregate the Amount To Be Paid Under the Contract by Applicant to the City of Boise. March 23, 1920.

The Idaho Power Company asks the Commission to approve, first, a contract with the City of Boise for street lighting service; and second, a contract by which the said City of Boise agrees to cancel and annul a certain franchise expiring in 1932, heretofore granted to the Beaver River Power Company, predecessor in interest of said Idaho Power Company, applicant herein, and to permit applicant to remove certain of its lines and equipment required to be maintained and operated by the terms of said franchise. This contract also provides for the payment to said city by applicant of certain sums annually, in lieu of an annual franchise tax imposed by the terms of said franchise. It is shown that to comply with the provisions of said franchise requires applicant to maintain and operate duplicate equipment in the City of Boise of approximate value of \$105,000.00, at an annual cost of about \$25,000.00.

The Commission says:

"The Commission feels that this duplication should be eliminated, not only in the interest of the City of Boise, but also because the saving of \$25,000.00 in operating expenses will be reflected over applicant's entire system, and therefore finds that said second contract should be approved. However, the Commission will not permit the payments as set forth in said contract, in lieu of the franchise tax payments, to be charged into the general operating expenses of the Idaho Power Company, applicant herein, as such

payments inure to the City of Boise alone, but so long as such payments are made, will require applicant to pro rate same among its patrons within the City of Boise, and collect same from them.

"With relation to the proposed contract, the Commission finds as follows:

#### 380—Taxation

"That under the ordinance and franchise referred to, the City of Boise has levied and collected a tax which it is proposed shall be continued in the future.

"That the money for the payment of such tax is charged to the general operating expenses of the entire system of the utility, which are met by other municipalities and communities as well as the City of Boise, and that in effect this requires the payment by the patrons outside of the City of Boise of money of which the City of Boise receives the sole benefit.

"That the effect of such tax should be limited to those patrons of the utility situated within the municipality which receives the entire benefit, in fairness to the other patrons, and to avoid discrimination, and that such change in rate for service to such patrons should be made, pro rata, as will compensate for the amount so to be paid to the City.

"That the proposed contract, attached to the application, should be approved with the proviso that the Idaho Power Company add to the charge for service rendered to each patron within the corporate limits of the City of Boise in proportion to the amount of service by each patron used, an amount sufficient to aggregate the amount to be paid under such contract by the Idaho Power Company to said City of Boise, such amounts to be included in and paid as a part of the charge for service for the month of January of each year during the term of this contract, under such a statement as will plainly indicate to the patron what such charge is for."

### IDAHO

#### 650—Discrimination.

Investigation As to Preferences and Advantages Granted by Public Utilities to Municipalities and Residents Thereof. General Order No. 23, of the Idaho Public Utilities Commission. March 31, 1920.

The Idaho Public Utilities Commission, on its own motion, investigated the matter where certain municipal corporations in the State of Idaho have demanded and received from public utilities certain advantages either by way of payment of money or service rendered and not paid for, either in whole or in part, or the installation and maintenance

of additional or duplicate equipment not reasonably required for the service of the municipality and the residents thereof, such benefits being required through franchises or by way of license or occupation tax.

Some municipalities have made no such requirements, while others have demanded and received very considerable amounts thereunder. Such demands are in the nature of a tax from which the municipality levying the same receives the sole and direct benefit while the cost of the same is charged against all of the patrons of the utility, wherever they may be situated in the state, and is reflected in the rates they pay for their service. The Commission says:

Section 2427 of the Compiled Statutes of 1919 provides:

“No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The Commission shall have the power to determine any question of fact arising under this section.”

“The Public Utilities Commission of Idaho deems that the patrons of public utilities who are not residents of the municipality which demands and receives such tax benefit or service should be relieved from the burden of paying or contributing thus indirectly to such municipality.

“The Commission has no jurisdiction or authority to control municipal corporations in their acts as such, and can prevent any discrimination which may arise therefrom only by such changes in rates as will result in limiting the effect of the extra cost caused by such advantages to those who benefit therefrom.

“It is therefore ordered that every public utility in the State of Idaho over which the Public Utilities Commission of Idaho has jurisdiction, shall make and file with the Commission on or before May 1, 1920, a statement which shall show:

“First: The name of each municipal corporation to which the utility makes payment under any franchise, license or occupation tax of either money, service rendered and not charged for, service rendered and not charged for at regulate rates, or by the installation and maintenance of equipment or facilities not reasonably required in the service of the municipality or its people, or not likewise furnished and kept in all other municipalities by it served.

“Second: The amount of money paid, the value of any service rendered and not charged for per month or per year, the value of any service furnished which is not charged for at regular rates,

and the difference between the charge made and that provided by the regular rate, the cost of installation, maintenance and operation of any excess or duplicate installation or equipment, and any other matter or thing required by the utility to be given, rendered or furnished to the municipality other or different from that furnished to all other municipalities.

“Third: A proposed change of rate or rates applicable only to its patrons within the limits of the municipality requiring such payment as shall result in an increased income sufficient in the aggregate to offset the money payment, or service furnished or increased cost of operation demanded by such municipality which shall be proportioned among all of the patrons of the utility within the limits of such municipality as equitably as may be, and shall be provided to be collected in the most inexpensive and practicable method.

“Fourth: At the time of filing such report and proposed change of rate with the Commission, the utility shall deliver to the municipality affected thereby a full, true and complete copy of the report required to be made and of the proposed change of rate, and method of collecting the same.”

### DISTRICT OF COLUMBIA.

#### 630—Cost of Supplies.

Washington Gas Light Company, Application for Authority to Continue in Effect Increased Gas Rates. Decision of the District of Columbia Public Utilities Commission, Granting the Application. March 25, 1920.

By the terms of its order number 341, dated September 19, 1919, the Commission continued in effect until April 1, 1920, the rate of ninety-five cents per thousand cubic feet for gas furnished to private consumers by any public utility in the District of Columbia, this rate to be reduced automatically to ninety cents per thousand cubic feet on April 1, 1920, unless on or before said date the Commission shall have ordered otherwise.

On March 6, 1920, the Washington Gas Light Company on its own behalf and on behalf of the Georgetown Gas Light Company, petitioned the Commission for a further continuance of the ninety-five cent rate until June 1, 1920, alleging that before April 1, 1920, it would not be able to present reliable estimates of the cost of manufacturing gas for the ensuing year, due primarily to its inability to make contracts for the supply of oil or to obtain quotations on future deliveries.

The Commission says:

“The company introduced evidence showing that its favorable contract for oil at six cents per gallon expired on March 15, 1920, and that the company had been able to obtain contracts for its needs to

about June 1, 1920, on the basis of seven and one-half cents per gallon. Estimating a five per cent increase in sales for the year ending March 31, 1921, and assuming that it could obtain sufficient oil for said year at seven and one-half cents per gallon, the company claimed that a selling price of over \$1.10 per thousand cubic feet to private consumers would be required from April 1, 1920, to give a seven per cent return on the Commission's finding of fair value brought down to March 31, 1921, but without including anything for the increased amount for materials, supplies and working capital claimed by the company.

"In view of the circumstances of this case, the Commission is of the opinion that the company's petition for a continuance of the present ninety-five cent rate for two months to June 1, 1920, is reasonable."

### CALIFORNIA.

#### 226—Service.

In the Matter of the Service of Natural Gas by the Midway Gas Company, Southern California Gas Company, Los Angeles Gas and Electric Corporation, and Southern Counties Gas Company. Decision of the California Railroad Commission. February 9, 1920.

Question has been raised in this proceeding as to the exact status of the various companies with relation to the right to the use of the available natural gas. The Los Angeles Gas and Electric Corporation insists that it is a consumer of the Midway Gas Company, taking delivery at Glendale, and that Southern California Gas Company is also a consumer of Midway, occupying no preferred status—and this notwithstanding a written contract between Midway and Southern California gas companies whereby it is agreed Southern California Gas Company shall have natural gas from Midway company sufficient for its needs. It is contended, however, by Los Angeles Gas and Electric Corporation, that this contract is ineffective as against the powers of this Commission to regulate the delivery and supply of this gas and that the Commission in exercising its powers should disregard the terms of this contract and treat the two companies alike, giving to each gas sufficient to serve domestic and commercial consumers and also sufficient to generate artificial gas and reform natural gas into artificial gas.

On the other hand, Southern California Gas Company takes the position that it has a prior right as against Los Angeles Gas and Electric Corporation to the use of natural gas and that the latter company can only claim delivery of gas after all consumers of Southern California Gas Company have been cared for. However, Southern California Gas Company is willing on the order of this Commission to deliver to Los Angeles Gas and Electric Corporation a supply of natural gas sufficient to care for its domestic and commercial consumers, provided

it is compensated therefor so that it will suffer no loss as compared with the revenue derived prior to the time when it cut off its industrial consumers to deliver gas used by them to the Los Angeles Gas and Electric Corporation.

Commissioner Edgerton, in his opinion, says:

"I believe it must be held that this Commission has power to regulate the service in the supply of gas by Midway Company to both the Southern California Gas Company and to Los Angeles Gas and Electric Corporation and that the contract or any contracts which in terms provide conditions of such service are subject to the powers of the Commission.

"In exercising this power, however, I believe the Commission should give consideration in this case to the facts with relation to bringing the natural gas to Los Angeles and its delivery to consumers and that the Commission should so act as to conform to the reasonable rules of justice.

"It appears that Southern California Gas Company has been the active agency for the promotion of the use of natural gas in Los Angeles and vicinity. At a time when the natural gas brought down to Glendale by Midway Gas Company did not find a complete and ready sale, Southern California Gas Company vigorously promoted the use of this natural gas by industry until now the industrial demand far exceeds the existing supply. The revenue from the use of natural gas by industry is a substantial part of the total revenue of Southern California Gas Company. Therefore it appears to me that where we call upon Southern California Gas Company in times of peak demand to shut off its industrial consumers, which means the cessation of revenue from this source, we must in fairness call upon the company benefited by this action, to wit, Los Angeles Gas and Electric Corporation, to make up this revenue.

"I do believe, therefore, it should be decided, for the purpose of this order, that Southern California Gas Company is entitled and shall have from Midway Gas Company at Glendale all natural gas over and above that which normally has been given to Los Angeles Gas and Electric Corporation; that at the times of peak demand, when this supply to Los Angeles Gas and Electric Corporation is not sufficient to care for its domestic consumers, that Southern California Gas Company deliver to Los Angeles Gas and Electric Corporation an amount of natural gas sufficient to maintain the prescribed quality of gas to its domestic consumers. \* \* \*

"Southern California Gas Company should supply the Long Beach district with sufficient gas, when augmented with such gas as can be supplied by Southern Counties Gas Company, for domestic and commercial purposes, and, except for local transmission or distribu-



tion conditions which may prevent, it should supply gas for industrial purposes so that industries in Long Beach will be on a parity with industries on Southern California Gas Company's system, and that this gas should be supplied at the rate as specified in the contract, being a rate of nineteen cents (\$.19) per thousand (1000) cubic feet.

"There is a fairly constant supply of natural gas but a widely fluctuating demand both hourly and daily, largely dependent upon temperature. As nearly as possible, from an operating standpoint, uniform delivery of gas to industries is advisable, also variation in demands from transmission lines should be minimized. A uniform quality of gas to consumers should, as near as practicable, be maintained. In view of these facts it is very difficult and practically impossible that a definite amount of gas be allotted to each utility or industry and the order of the Commission must primarily be a statement of principles. The utilities must heartily cooperate with each other and the Commission in order that the most efficient use of the gas be had. \* \* \*

"The former rates for industrial service provided that priority to gas depended upon the rate schedule chosen by the consumer and not according to necessity of use of gas. This rule has not been followed out during the past few weeks, but the priority has been based more generally upon the necessity for gas. I believe that, as to the gas which is at this time to be available to industries, all industries receiving a priority based upon the essential need of gas should be placed upon a parity as to rates and that this rate should be that as classified as Schedule No. 'A-7' of Southern California Gas Company, for a guarantee of \$75 per month and a rate of 30 cents per thousand cubic feet, and that consumers who continue to obtain gas under the specifications of this order shall be placed upon this schedule and continued thereon.

"Special investigation of industries must be had to determine what industries shall be allowed to be considered as having a prior right to gas. It may be well to state, as a general rule, that industries which can use other fuels, whether equipped or not, will not be considered as having a right to the use of gas during a shortage. Only such industries as can use no other fuel will be given a preference. The Commission is directing that an investigation be made by its gas and electric division into the needs of each of the industries sufficient to determine their status in such cases as it is necessary that investigation be had. \* \* \*

"The evidence before the Commission at this time in this whole matter indicates very clearly that because of the rapid growth in the demand for gas in the southern part of this state the gas companies are not at this time adequately equipped to care for the

present and future demands. This is a situation which should not be allowed to continue, as serious results will surely come if adequate plans are not immediately prepared for meeting the constantly increasing demands for gas.

"I believe it is incumbent upon the existing gas companies immediately to prepare and submit to this Commission plans designed to fulfill the obligation of these companies in meeting the demands of present and future consumers and the order herewith following will so provide."

### **NEW JERSEY.**

#### **224—Rates.**

Application of the New Jersey Water Service Company for Approval of Increase in Fire Hydrant Rates. Decision of the New Jersey Board of Public Utility Commissioners, Granting an Increase. April 6, 1920.

The New Jersey Water Service Company filed an application for authority to increase its rates for fire hydrant service. The company alleges that the continued increased operating expenses within the last two years has made it necessary to procure increased revenue, and further claims that the fire hydrant service throughout its territory is now, and has been since its installation, furnished by the company at less than cost, and that there are discriminating rates for the same service between some of the boroughs it serves.

#### **224.2—Contracts**

Regarding the question whether the Board is fixing just and reasonable rates, as declared to be its duty under the statute, should require the company to observe the terms of an agreement between the Union Water Company (predecessor to the petitioner) and Borough of Haddon Heights, dated July 5, 1911, which attempted to fix and determine the rates for both domestic and fire service, the Board says:

"The act creating the Board of Public Utility Commissioners, prescribing its duties and powers (Chapter 195, Laws of 1911), became effective May 1, 1911. Any attempt by a utility and a municipality to fix rates, except in conjunction and with the approval of this Board after its formation is of no legal consequence in a rate proceeding. The agreement made with the Borough of Haddon Heights was subsequent to the creation of the Board.

#### **400—Rate Theory**

"Should the Board act on the proposed fire hydrant rate without an accurate and scientific allocation of the costs of the fire service as distinguished from the domestic service?"

"The Board held in the Hackensack Water Company rate case that the cost of water for fire service should be made by charges based on the proportion of plant and system required for fire protection,

exclusive of hydrants, and an additional charge for each hydrant. This is a correct engineering principle and one which the Board follows wherever practicable and does not involve an unduly large expense on either the company or the municipality in the making of such allocations. In the present case the total increase in revenue, if the uniform charge of \$25.00 per fire hydrant per annum is permitted, would be \$1,333.00. The testimony shows that with this increased revenue the company would still have a deficiency of about \$500.00 from a 6 per cent return on the value of its property after paying operating expenses. \* \* \*

"The Board, being familiar with the charges made for hydrant service by the different water companies in various parts of the state, knows by the comparison of rates that the proposed charge of \$25.00 per fire hydrant is not unreasonable; and being satisfied from the evidence that the company is in need of additional revenue, will permit the rule providing for a uniform rate for fire hydrant service of \$25.00 per annum per fire hydrant to become effective throughout the territory served by the company, including the Boroughs of Barrington, Oaklyn, Audubon and Haddon Heights, on and after May 1st, 1920."

### **CALIFORNIA.**

#### **132—Protection From Competition.**

F. A. Wilson and Company, Application for a Certificate of Public Convenience and Necessity. Decision of the California Railroad Commission, Denying the Application. February 13, 1920.

In denying the application of F. A. Wilson and Company for a Certificate of Public Convenience and Necessity to operate an automobile stage line between San Francisco and Carmel and intermediate points, the Commission says:

"As the Commission has frequently stated in its decisions on applications for certificates of public convenience and necessity to operate automobile stage lines as common carriers of passengers, an affirmative showing must be made as to the public convenience and necessity to be served. It is incumbent upon applicants in proceedings of this nature to make an affirmative showing that the transportation facilities offered by existing authorized carriers are insufficient, unsatisfactory, or do not in any other manner meet the requirements and demands of the traveling public, and in this proceeding, we find from the evidence that all witnesses testifying in behalf of applicant, universally commend the service of the protestant, the Southern Pacific Railroad, as being adequate and satisfactory. The public desiring transportation by automobile stage between San Francisco, Del Monte, Monterey and Carmel can at the present time secure such accommodation with a minimum of

inconvenience by the use of the stages of the Pickwich Stages, Northern Division, between San Francisco and Salinas, by the use of either of two lines now operating between Salinas and Monterey and, as regards the community at Carmel, by the use of the stage line operating between Monterey and Carmel, a number of stage lines operating between San Jose and Salinas, as well as three lines operating between San Francisco and San Jose can be utilized as regards the territory between San Francisco and Salinas, if the through service of the Pickwich Stages, Northern Division, is for any reason not desired as regards the territory between San Francisco and Salinas. The use of a combination of these lines would probably not be convenient for the public, but the lines are available for use if for any reason the public or any portion thereof did not desire the service of the Pickwich Stages, Northern Division.

"The evidence in this proceeding does not warrant the Commission granting the order herein sought for the reason that there is no showing that existing lines are unable to furnish transportation by automobile stage over the route herein sought; and if a through route and joint rate is desired by the public, and existing stage lines cannot themselves agree on an adjustment of schedules and rates which will make possible a through route and joint rate between the points sought to be served by applicant, complaint to the Commission that a through route and joint rate is necessary will receive investigation and an order of the Commission will issue based on the evidence adduced at a public hearing. The remedy for the adjustment of conditions which may not be desired by the public is not the establishment of a competing line, thereby dividing the traffic to the extent that existing authorized lines are unable to render the character of service demanded by the public and required by the regulations of this Commission."

### **WISCONSIN.**

#### **510—Forms of Rates.**

Hayward Electric Light and Power Company, Application for Authority to Change Its Power Rate from a Flat Rate to a Meter Rate. Decision of the Wisconsin Railroad Commission, Granting the Application. December 24, 1919.

In granting the application of the Hayward Electric Light and Power Company for authority to withdraw the present commercial power schedule which is on a flat rate basis and to substitute therefor a metered schedule, the Commission says:

"The advisability of changing from a flat rate to a metered rate as a general proposition has always been upheld by this Commission as a matter of equity. That a customer should pay for service in proportion to the amount or value as well as the cost of the service rendered is a well established principle. Under the flat rate a cus-

tomer who uses his installation only occasionally must pay the same rate as one who uses his installation continuously, if both installations are the same size. If, then, the total revenue from all the customers is in proportion to the cost to the company of the total energy furnished the short time user must pay many times his proper share and the long hour user much less than his fair proportion.

"There is, moreover, no incentive toward economy in the use of energy under the flat rate. This is to the utility a very important consideration both on account of cost of this extra generation and on account of loading down of the generating equipment which may mean the installation of additional equipment to take care of new customers when under the metered system this might be unnecessary. Another consideration sometimes enters into the case of hydraulic plants. During periods of low water the water used in generation may exceed the stream flow, in which case the load must be cut off either in part or temporarily in entirety.

"In changing the schedule from a flat rate to a metered basis it is in most cases impossible to determine the result of the new rate. Even if an analysis of the uses of the customers is made by metering the energy used prior to the billing under the new rate and the rate devised on the basis of this analysis, the care taken to decrease the cost by the consumer will, when the metered rate is installed, result in a loss of revenue."

## REFERENCES

### RATES.

#### 540—Minimum Charge.

The Ready to Serve Element in Public Utility Rates, by C. E. Grunsky. *Journal of Electricity*. April 1, 1920. p. 317. 1 page.

In this article the writer points out the equity of adjusting rates, keeping the fact in mind that the presence of a public utility in any district increases the business possibilities of that district to such an extent that the entire community, and not merely the customer shares in the benefits. The writer says:

"Public utility rates are not necessarily uniform to the individual rate payers. But the rates as fixed are intended to apply to average conditions in various classes into which those who are served by any utility are, for convenience, divided. The approximation to fairness meets the practical requirement. But, it may be asked, does the rate favor the large consumer? On the unit basis he usually pays less than the great mass of rate payers. The illustration will be equally apt if what the large consumer of electric energy pays be compared with what electric energy costs the small consumer.

"There are several reasons for such apparent inequalities in the rates. Thus, for example, let it be supposed that it is to the interest of the whole com-

munity that the establishment of big business be encouraged and that one of the elements to make an urban district attractive for such business and particularly for industrial establishments is cheap water, and let it be further assumed that the supply of water is abundant, that provision having already been made for future demands, there is more water available than actually required. Under such conditions the immediate operating expenses would increase the net earnings of the water company and would, therefore, have the effect of reducing rates. In such circumstances, a graded rate is fair. Giving the larger consumer a special, lower than average rate, is, therefore, sometimes legitimate.

"And, again, everybody, in the spirit of fairness, is willing to pay for what they get, provided only that the same treatment is accorded to all alike. Consequently, there is rarely any objection to basic charge for such services as keeping a house connection and a meter in order, reading meters, making out bills and collecting. The cost of rendering such service is independent of the amount of water or gas or energy consumed on the premises which are served. But if for such services a basic charge is made and to this is added a further charge, proportional to the amount of service rendered or commodity furnished, the small consumer, on the basis of his bill, will find himself paying a somewhat higher price per unit of service or commodity than the large consumer."

### 623—Power Factor

Measurement of Power Factor for Rates, by C. E. Brown. *Electrical World*. March 27, 1920. p. 721, 2 pages.

The desire on the part of central stations to incorporate power-factor clauses in rate schedules has directed a great deal of attention to the problem of measuring the power factor of customers' loads. There appears to be no generally accepted practice of making and recording power-factor measurements on three-phase loads over a period of time, and some of the methods commonly used are not accurate on unbalanced loads. A method has been developed, however, which has been found to make accurate measurements on customers' loads under various conditions met with in service.

The writer points out that the average power factor may be obtained over a period of time by using standard watt-hour meters connected to register energy and reactive components of load.

## GENERAL

### 920—Economy and Efficiency

Standard Maintenance in Power Plants, by A. B. Stitzer, *Electrical World*. March 27, 1920. p. 718, 2 $\frac{3}{4}$  pages.

Authorities differ on what really constitutes maintenance, but it is usually referred to as the expense of keeping a plant in running condition over and above the cost of attendance. It includes the cost of up-keep replacement and precautionary measures. This latter item includes renewal of working parts, painting of perishable or exposed material and replacement of worn-out and defective equipment.

The writer says:

"The extreme limit of maintenance, of course, would be to keep the plant continuously in a new state, but since such a condition could only exist in theory, some practical limit must be established by investigation and experience. Even then, however, maintenance is not to be applied indiscriminately; to become a real economy it should be efficiently standardized.

"There are two distinct divisions of such work, the first being a combination of inspection and record keeping, the second consisting of repairs and renewals. \* \* \*

"Systematized, efficient inspection and records should be the basis of maintenance, and the elaborateness of the work should agree with the size and importance of the plant. \* \* \*

"Reserve capacity in a power station is very often overlooked as a factor connected with maintenance of station equipment, the common idea being to consider reserve capacity as just so much insurance against interruptions to service during periods of emergency breakdown. Contrary to this belief, standardized maintenance does have a certain definite relation to reserve capacity."

### COURT DECISION REFERENCES.

#### 228—Franchises.

City of Los Angeles et al v. Los Angeles Gas & Electric Corporation. Decision of the United States Supreme Court. December 8, 1919.

This is an appeal from the District Court of the United States to review a decree enjoining the execution of a municipal ordinance providing for a municipal electric street lighting system in such a way as to trespass upon a privately owned lighting system.

The United States Supreme Court in affirming the decree of the District Court says:

"In counter propositions the corporation urges its franchise and the right it conveys to occupy the streets of the city,—rights, it is said, having the inviolability of a contract and the sanctity of private property; not, indeed, free from reasonable regulation, if such regulation is governmental, but free from molestation or displacement to make 'Space' for a city system, for that is proprietary. We have, therefore, the not unusual case of rights asserted against governmental power,—a case somewhat fruitful of disputable considerations and upon which judgment may not be easy or free from controversy. But there is some point where power or rights must prevail, however plausible or specious the argument of either against the other may be. As for example, in the present case. The city has undoubtedly the function of police; it undoubtedly has the power of municipal lighting and the installation of its instrumentalities (Russell v. Sebastian, 233 U. S. 195, 202, 58 L. ed. 912, 920, L. R. A. 1918E, 882, 34 Sup. Ct. Rep. 517, Ann. Cas. 1914C, 1282); but function and power may be exceeded and, so far as wrongful, be restrained. And such was the conclusion of the district court, applying the Constitution of the United States, and such the ground of its judgment.

"In what way the public peace or health or safety was imperiled by the lighting system of the corporation, or relieved by its removal or change, the court was unable to see, and it is certainly not apparent. The court pointed out that there were several lighting systems in existence and occupying the streets, and that there was no contest, or disorder, or overcharge of rates, or peril or defect of any kind; and therefore concluded that the conditions demonstrated that while the city might install its own system, there was no real 'public necessity' arising from consideration of public health, peace, or safety requiring the city to engage in the business of furnishing light.

"The court reasoned and concluded that what the city did was done not in its governmental capacity,—an exertion of the police power,—but in its

'proprietary or quasi private capacity'; and that therefore the city was subordinate in right to the corporation, the latter being an earlier and lawful occupant of the field. The difference in the capacities is recognized, and the difference in attendant powers pointed out, in decisions of this court. *Vilas v. Manila*, 220 U. S. 345, 55 L. ed. 491, 31 Sup. Ct. Rep. 416, *Russell v. Sebastian*, 233 U. S. 195, 58 L. ed. 912, L. R. A. 1918E, 882, 34 Sup. Ct. Rep. 517, Ann. Cas. 1914C, 1282; *South Carolina v. United States*, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 Ann. Cas. 737, *New Orleans Gas-light Co. v. Drainage Commission*, 197 U. S. 453, 49 L. ed. 831, 25 Sup. Ct. Rep. 471; *Vicksburg v. Vicksburg Waterworks Co.* 206 U. S. 496, 508, 51 L. ed. 1155, 1160, 27 Sup. Ct. Rep. 762.

"The city's contentions are based on a confusion of these capacities and the powers or rights respectively attributed to them, and upon a misunderstanding of the reservations in the decree of the state court. The reservations were made only in prudence, not to define the existence or extent of powers, and forestall their challenge, but to leave both to the occasion when either of them might be asserted or denied. And it is clear that it was not intended to confound the capacities in which the city might act, and the relation of the city's acts to those capacities.

"It is not necessary to repeat the reasoning or the example of the cases cited above, by which and in which the different capacities of the city are defined and illustrated. A franchise conveys rights, and if their exercise could be prevented or destroyed by a simple declaration of a municipal council, they would be infirm indeed in tenure and substance. It is to be remembered that they come into existence by compact, having, therefore, its sanction, urged by reciprocal benefits, and are attended and can only be exercised by expenditure of money, making them a matter of investments and property, and entitled as such against being taken without the proper process of law,—the payment of compensation.

"The franchise of the present controversy was granted prior to 1911, and hence has the attributes and rights described in *Russell v. Sebastian*, 233 U. S. 195, 58 L. ed. 912, L. R. A. 1918E, 882, 34 Sup. Ct. Rep. 517, Ann. Cas. 1914C, 1282. Its source, as was that of the franchise in that case, is the Constitution of the state, and is that 'of using the public streets and thoroughfares thereof . . . for introducing into and supplying,' a city 'and its inhabitants either with gas-light or other illuminating light.' We said of such that the 'breadth of the offer was commensurate with the requirements of the undertaking which was invited. The service to which the provision referred was a community service. It was the supply of a municipality—which had no municipal works—with water or light.' And again: 'The individual or corporation undertaking to supply the city with water or light was put in the same position as though such individual or corporation had received a special grant of the described street rights in the city which was to be served.' We can add nothing to this definition of rights, and, we may repeat, they did not become immediately violable or become subsequently violable.

"It will be observed that we are not concerned with the duty of the corporation operating a public utility to yield uncompensated obedience to a police measure adopted for the protection of the public, but with a proposed uncompensated taking or disturbance of what belongs to one lighting system in order to make way for another. And this the 14th Amendment forbids. What the grant was at its inception it remained, and was not subject to be displaced by some other system, even that of the city, without compensation to the corporation for the rights appropriated.

"We think, therefore, that the decree of the District Court protecting the corporation's rights from disturbance under the ordinance in question must be and it is affirmed."



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## Rate Research

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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### NEW YORK

#### 300—Investment and Return.

City of Elmira v. Elmira Water, Light and Railroad Company, Complaint Against Proposed Increase in Rates for Natural Gas Service. Decision of the New York Public Service Commission (2 D), Fixing a Valuation To Be Used as a Basis for Rate Making. January 22, 1920.

The Elmira Water, Light and Railroad Company, on January 20, 1919, filed a proposed schedule of rates for natural gas service. The City of Elmira filed its complaint and obtained an injunction restraining the Company from putting any increased rates into effect until such rates had been passed upon by the Public Service Commission.

On June 10, 1919, the Company filed a petition to increase its natural gas rates. It was agreed that the rate base should be fixed before the case proceeded further.

#### 310—Valuation

To expedite proceedings and to eliminate, so far as possible, the expense and duplication of work involved in a contested property valuation, it was arranged that three engineers, representing the Commission, the City and the Company, respectively, should work jointly and prepare a report showing the facts regarding property in the gas department of the Company.

#### 312.8—Discarded Property

The first item in the Company's list of claimed values which is objected to by the City is marked item (c), being gas mains formerly used for artificial gas and which the Company claims it can use to the advantage of the plant by carrying an auxiliary supply of gas from the plant to some of the more distant sections of the City and tapping into the distributing system at those points, thereby equalizing the distribution.

The Commission says:

"As the Company is furnishing natural gas which seems to carry sufficient pressure when the supply is available, such auxiliary mains

are not then needed. When the supply is not available the auxiliary mains are not useful, as the natural gas mains are more than sufficient to carry the entire supply. If and when a supply of gas, natural, artificial or mixed, shall be furnished to the City by this plant, and these artificial mains, still in the streets but now unused, are again used as above indicated, then their value should be included in a rate base. Until then the value should not be included. The mains of the old artificial gas system were in use for a great many years. It must be presumed that they had 'earned themselves out' to a large extent. There is, however, a further reason for disallowance. The artificial gas was first in the field. The natural gas came in as a competitor. It is true that in this case the competition was not of the deadly kind, because the same interests controlled both companies, but the operation of economic laws, in spite of this control, created a competitive condition. Eventually the companies were brought into one company and finally the manufacture and distribution of artificial gas ceased. It is clear that after the combination it was found that an economic handling of the gas situation required the discontinuance of the manufacture and distribution of artificial gas, and therefore the non-use of the artificial gas system. No doubt this was thought at the time to be in the interest of sound economy on the part of the Company, but it would seem that the combination making it possible to use the more profitable system ought to work for the benefit of the public as well as the Company. The use of the more profitable system having produced an economic benefit to the Company, it ought not now to be allowed, in addition, a return on the unused artificial gas mains while they remain unused."

### 360—Depreciation

On the treatment of the theoretical accrued depreciation there is a sharp conflict. The first question is the depreciability of the following:

Engineering and superintendence.....	\$2,897.15
Law expenses during construction.....	120.74
Injuries during construction.....	120.74
Taxes during construction.....	241.48
Miscellaneous construction expenditures.....	965.92
Interest during construction.....	5,794.30
Total .....	\$10,140.30

It is claimed by the City that capital expenditures of the above nature are depreciable and that the amount set forth above as accrued depreciation should be recognized.

The Commission says:

"So far as the items above mentioned, commonly called 'over-heads,' are not included in the cost of definite units of tangible

property, they are not, according to the most common practice, decreased when property is retired. There is, therefore, no realized depreciation in these items. On the other hand, the overhead cost of replacement is in large measure absorbed by the general expense accounts of current operation, so that there is little or no duplication in overhead capital costs. Whether this is, as a practical matter, the most accurate method of accounting, need not be discussed here. As long as it is the method in general use, it is needless to compute a theoretical depreciation reserve to cover retirement losses on property that is never retired. To do so would be to require the consumer to pay in the rates an additional depreciation allowance that would never be used for replacement, since overhead replacement costs would be ordinarily met out of current operating expenses, and a constantly increasing depreciation reserve would thereby be created. If original overhead costs were taken from capital account when tangible property is retired, they would have to be treated in the same manner as direct costs. Under such circumstances we think the element of depreciation does not enter into the above items, and there should not be any annual charge in operating expenses to meet the claimed annual depreciation thereon.

"This leaves the agreed theoretical accrued depreciation of \$94,582.56 to be disposed of. The Company has a balance of \$24,029.31 in its reserve for such accrued depreciation.

### **362—Accrued Depreciation**

"Depreciation, using the term in the meaning which includes obsolescence, inadequacy, etc., is continuous, and it varies with the kind of material, the use to which the material is put, kind of maintenance it receives, development of the art, growth in business, salvage value, and many other factors, and therefore the growth or extent of such accrued depreciation is, at any time, an estimate. The depreciation being a certainty, but the ratio of progress of same being an estimate, good business judgment requires that careful estimates be made, and based upon such estimates ratios of depreciation be adopted, and a fund accumulated to meet the depreciation when it becomes realized. It is realized in this sense only when renewals or replacements are actually made.

"The annual depreciation charge is a method of spreading these renewal and replacement costs over a period of years, so that the burden does not fall entirely within the year when such replacements are actually made.

"The Public Service Commissions Law permits the Commission, in the fixing of rates, to take into account this necessity for equalizing replacement costs and allow for it in determining the 'reasonable return,' so that the plant may be kept in efficient operating condition.

"A company, in setting aside annually some portion of its revenues in a reserve to meet the depreciation when renewals become necessary, generally uses the reserve so set aside for the purchase of new property of the nature of additions or betterments. In this way the company is enabled to make such additions and betterments without at the time borrowing on notes or issuing small amounts of capital securities, but the transaction is really a borrowing by the company from the depreciation fund. When this is done, the depreciation reserve will be represented by an equal amount of additions and betterments, or other property not yet capitalized. Later, when renewals and replacements become necessary, the amount of additions and betterments is capitalized in a reimbursement proceeding, the moneys received are repaid to the depreciation fund, thus making them available for renewals and replacements. Until such capitalization occurs, the company has been earning on additions and betterments paid for out of funds which it received, not as capital, but in the form of rates from consumers. This fund is, in its nature, a trust fund. However, as this reserve might better be busy than idle, it is proper to use it to purchase new property. When so invested, the company having borrowed the money from the fund should pay interest for it, or deduct the balance in the reserve from its total assets to determine the rate base. Such reserve, so invested, does not represent money which the company could disburse in dividends, but money which has been received from its customers and has been set up on its books as not being disburseable in dividends but held to pay for renewals and replacements.

"It is the duty of utility companies not only to render service, but to protect the operating integrity of the plant that renders the service. Such a company may include, in rates, a sum to keep up the plant and preserve its usefulness at full efficiency. If the company does not collect from the consumers the amount of this loss, but continues to pay the normal return on its original investment, it is paying dividends out of capital. If it lessens its dividends in order to provide a depreciation fund, it is contributing an equivalent part of its capital to the public service without compensation. If the owners of a company do not include such depreciation charge in their rates and set up on their books a reserve representing the company's liability for the amount so received, then, as the plant and property of the company are steadily deteriorating, the day comes inevitably when renewals and replacements will have to be made and there will be no fund set aside for the purpose. It will be the duty of the Commission to order the renewals so that proper service may be rendered. The company must make such renewals. As it has failed to build up a proper reserve and, as renewals are not capitalizable, except, perhaps, temporarily, such renewals, when made by the company, will have to be paid out of profits which otherwise would

go to dividends, and whatever debt is permitted to provide such renewals will have to be amortized out of the net earnings of the company and dividends reduced accordingly.

"Of course, the foregoing applies to a company that has not made an average reasonable return, including, of course, the annual depreciation charge, over a period of years. If the company has made such an average reasonable return, then the logic of such a condition would require that the company, having received revenues from rates that were high enough to meet the depreciation by a reserve, and having taken that portion of the revenues which might and should have been so used and disbursed same as dividends, the stockholders have, in fact, paid themselves in enlarged dividends out of the body of the plant to the extent of the depreciation. In such a case the full theoretical accrued depreciation should be deducted from the rate base.

"From all of which it seems reasonable to conclude that if the utility company has not received, because of insufficient rates, sufficient revenues to provide a reasonable return, including enough to meet the accruing depreciation, and if the owners of the company decide to pay some dividends and not set up a sufficient accrual reserve, they should not be compelled to deduct from the rate base, in a given case, the estimated amount of the theoretical accrued depreciation, but, on the other hand, should be required to keep the plant up to full efficiency by proper renewals and replacements which, in such a case, will have to be paid for, when made, out of moneys which otherwise might be disbursed in dividends. It is the duty of the owners of a public utility to manage its affairs so that its service to the public, whether present or future, shall be at full efficiency. The policy of neglecting to provide a sufficient annual amount for depreciation reserve only puts off the evil day; it does not prevent that day from coming. On the other hand, if the company has not made a fair return, and the consumers have not been charged in current rates from year to year any appreciable amount to meet such accruing depreciation, the present public should not require such a company to make good at once the full amount of such theoretical accrued depreciation by deducting the whole of the theoretical accrued depreciation from the rate base. The public has had the benefit of rates which were lower by the amount of the allowable depreciation ratio which was not included. The public has not paid, nor the company received, the 'annual depreciation ratio.' The company has not availed itself of the opportunity to build up a reserve. That was a gain to the consumers reflected in rates.

"The amount of the loss to the company will some day be fixed when renewals and replacements must be made. When that day comes the company will have to meet the loss. However, in the

meantime, if the company delivers and the public receives full service, it seems hardly fair to use the ratios of annual depreciation which were meant to estimate the annual sum to be set aside and apply them as a definite measure of actual present loss in value to that amount and deduct the same from the rate base. The estimate may prove, as the years go by and in proportion to the care taken of the units of property, somewhat wide of the mark.

"In determining whether the agreed theoretical accrued depreciation should be deducted from the rate base, it is necessary to find whether or not this Company in the past has received an excessive return. Using the figures set forth on page 3 of City's Exhibit No. 1, of August 13th, which may be presumed to contain the best showing from the City's standpoint, we find from 1909 to 1919, using an 8 per cent return, an accumulated deficit of \$18,336. Using the Company's figures, which are presumably the most favorable to it, an accumulated deficit is arrived at of \$304,000, and crediting 8 per cent return for eleven years on \$100,000 of intangibles, the deficiency would be, as claimed by the Company, \$216,000. It seems from the foregoing, and from all evidence in the case, that the Company has not made such an excessive return on the value of its property in use in the public service that an amount equal to the accumulated theoretical accrued depreciation should be deducted from the rate base in this case.

"The Company, in the Conference report, accepts the accumulated or theoretical accrued depreciation of \$93,619.92. To this should be added \$962.64, depreciation on \$4,718.58, transferred from 'not used' to 'used' property. It set up on its books as of December 31, 1918, a balance in the account for accrued amortization (gas) \$24,029.31. There is thus unprovided for about \$70,000 of theoretical depreciation that it is conceded by the Company has already accrued in the property. As to the balance of \$24,029.31, it would seem that this balance should be regarded as a trust fund which the Company borrows to use in the purchase of additions and betterments, or for other company purposes. Regarding this fund, therefore, as a trust fund, and the Company properly borrowing from the trust fund for capital expenditures, it would seem an appropriate and reasonably simple method of procedure to allow the Company a return upon the undepreciated value of its property and charge the Company 6 per cent on the annual average balance of the trust fund, the interest to be added to the fund. The decision herein is on the theory that the balance in the reserve fund will be so treated. As to the balance of about \$70,000 which is not provided for, and which the Company claims because of insufficiency of return it was unable to provide for, it should not be deducted from the rate base at this time, but when the items of property to which that depreciation was applied are actually retired,  $\frac{7}{94}$  of the



realized depreciation which shall be apportioned to the time prior to July 15, 1919, the date of the Conference report, should be charged against gross income, that is, from the amount that would otherwise be available for surplus and dividends. As an alternative to this method the Company may, from time to time, out of such gross income, make extra accruals to the reserve so that retirements in full may be charged to it. While it is clear that this Company has not been setting up a sufficient annual depreciation charge, although doing better recently, it is expected in view of the fixing of the rate base in the above manner, that hereafter a sufficient annual charge shall be made for depreciation. So long as the property operates at full efficiency this theoretical accrued depreciation, even though agreed as to amount, should not, as above stated, be deducted from the rate base, because it is, after all, only an estimate, and the fact that the retirement is not yet necessary, if fairly substantial evidence that the various units are rendering proper service up to the time of retirements. However, when that time comes and the actual depreciation is definitely known, then the stockholders of the Company must accept the burden falling upon them at that time for their failure to provide in advance sufficient annual charges to meet the annual accruing depreciation.

"When it is stated that the plant of this Company is maintained at full operating efficiency it is not meant that full service is given at all times. There is, in fact, serious and sometimes full failure of service. This is due to the lack of supply of gas. When gas is furnished by the Potter Gas Company, the distributing plant of this Company is sufficient to meet the service demands. \* \* \*

### 315.1—Going Value

"Counsel for the Company urges an allowance of \$100,000 or more for 'going value' because of past 'inadequacy of return.' In dealing with the question of depreciation in this case, the lack of a full return, including an amount to cover such depreciation, has been considered, and because of that lack the full theoretical accrued depreciation has not been deducted from the rate base. It seems that is as far as the Commission ought to go in this case. The status providing for the fixing of a maximum rate which will allow a reasonable return is not of itself a guarantee that a company will at all times make a reasonable return, and it seems that if a company chooses to conduct its business over a considerable period of time without increasing its rates or asking for an increase of rates that it should not be permitted to capitalize that failure of full return and have future rate payers for all time pay a return on the total of that loss. Of course, this does not include the loss which might be more aptly described under the heading 'get going' value. There is not sufficient proof here of that kind of loss to make an allowance therefor. The Commission has, therefore, seen fit not to

include an allowance of '\$100,000 or greater sum' as going value in this case.

The rate base should be:

Physical property in use.....	\$602,639.67
Working capital .....	17,500.00
Total .....	\$620,139.67

### IDAHO.

#### 224—Rates.

Utah Power and Light Company, Application for Authority to Charge for Emergency Service Furnished to the City of Idaho Falls, Its Filed Schedule of Rates for Such Service. Decision of the Idaho Public Utilities Commission, Granting the Application. April 16, 1920.

The Utah Power and Light Company filed with the Commission its petition for an order authorizing it to apply to the standby or emergency service furnished by it to the City of Idaho Falls, Idaho, its scheduled rate for such service on file with the Commission.

The City of Idaho Falls intervened and alleged that it is a municipal corporation under the laws of Idaho; that it entered into a contract with the predecessor of the applicant by way of a franchise, and that the franchise under which the applicant operates in the City of Idaho Falls was entered into prior to the passage of the public utilities law, and for that reason the Commission has no jurisdiction of the matter or authority to permit any change in the rate, or to fix any rate concerning such service, for the reason that any change would in effect vary the terms of the franchise.

The Commission says:

"The Commission has no jurisdiction over the City assets nor over any of its acts with regard to its own electric plant and system within the City, but when the City demands and receives services from a public utility, which, by the public utility law, is within the jurisdiction of the Commission, the City stands in no different relation or position than any other patron of such utility.

"Sec. 2425, Idaho Compiled Statutes, 1919, is in part as follows:

"\* \* \* no public utility shall charge, demand, collect or receive a greater or less or different compensation from any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedule on file and in effect at the time.'

"Under the allegations of the application, the franchise between the City and the applicant provides for a rate, or it is so contended,

less and different from the scheduled rate applicable to such services. The authorities are so numerous, and the holdings so nearly unanimous to the effect that in such case the Commission has jurisdiction, that we do not deem it necessary to cite them here, and we hold that the Commission has jurisdiction and the authority to make such order in the matter as the proof may justify under the law.

"The fundamental reason for viewing special contracts with disfavor, whether between public utilities and municipalities, or between public utilities and other patrons, is that service rendered must be paid for, and if the patron receiving the service is permitted under a contract to pay for such service less than his reasonable share, then an additional burden is laid upon other patrons to make up the difference, and as we view it, each patron, whether a municipality or a private corporation, an association or an individual, should pay the established rate for what service he demands."

### CALIFORNIA.

#### 453—Comparative Rate Data.

Application of the Richmond and San Rafael Ferry and Transportation Company, for Authority to Increase Its Rates. Decision of the California Railroad Commission, Denying the Application. February 11, 1920.

Applicant asks the Commission for authority to increase its rates for the transportation of passenger automobiles and one-ton freight trucks, alleging that the federal controlled lines have granted this advance, and that the Commission has granted a similar advance to the Martinez-Benicia Ferry Company.

The Commission says:

"The Commission had nothing to do with the fixing of the rate now charged by carriers controlled by the United States Railroad Administration and is, therefore, not prepared to pass upon the reasonableness of that rate or to consider it a reason for granting the present application.

"The application of the Martinez-Benicia Ferry Company to advance its rate from 75 cents to 94 cents was granted after a full and complete showing by that company that the rates theretofore charged were not now compensatory.

"The service of applicant is good, considering its facilities. The increase of such facilities will, according to testimony of applicant, probably result in largely increased business, and while, as before stated, the Commission desired to be helpful in furnishing the public with adequate service, it cannot advance the rates of a company which is admittedly doing a profitable business to aid such

company in financing further capital expenditures. The record of this Commission should satisfy applicant that if further additions to capital are made, a request that the Commission adjust applicant's rates to a compensatory basis based upon such additions to capital, after a thorough investigation of results flowing from added facilities by the investment of such additional capital, will receive careful consideration."

### CALIFORNIA.

#### 129.1—Discrimination.

Antelope Creek and Red Bluff Company, Application for Authority to Increase Rates. Decision of the California Railroad Commission, Granting an Increase. February 13, 1920.

The Antelope Creek and Red Bluff Water Company applied for authority to increase its rates charged for water. The application alleges that the rates in effect at the present time, which were established by city ordinance No. 138 on April 14, 1913, are non-compensatory and do not produce a sum sufficient to meet operating expenses, depreciation and interest on the investment, and, further, that they are discriminatory in favor of the municipality, in that no provision is made for payment by the municipality for fire protection or the use of water in schools and municipal buildings.

The Commission says:

"Attention is called to the fact that the powers of this Commission to regulate and establish rates, despite existing contracts between a public utility and its patrons, is clearly established by the decisions of the higher courts. Further, that a contract or agreement entered into between a municipality and a utility is no different from any other contract.

"While in this particular case the contracts may have been proper at the time they were made, it appears that changed conditions of water use have brought about the necessity for a change in the rate for this public use of water."

### COURT DECISION REFERENCES.

#### 200—Public Service Regulation.

Ohio and Colorado Smelting and Refining Co. v. Public Utilities Commission of Colorado, *et al.* Decision of the Supreme Court of Colorado. January 5, 1920. Rehearing Denied March 1, 1920. 187 Pacific 1082.

The Salida Light, Power and Utility Company, on October 10, 1907, entered into a written contract with the Ohio and Colorado Smelting and Refining Company by which the power company agreed to supply the smelting company with electrical energy sufficient to operate its smelter, located near Salida, Colorado.

The price to be paid under the contract was \$50 per horsepower per annum, which it is agreed is equivalent to 7.65 mills per kilowatt hour. This contract was continued or extended by written agreement between the parties to October 10, 1923; the last extension bearing date of January 21, 1913. The contract involved extensive improvements by both parties which were afterwards made. Power has been continuously supplied to the smelting company under the agreement until the present proceeding.

In February, 1915, the plant, properties, contracts, etc., of the Salida Light, Power and Utility Company were conveyed and assigned to the Colorado Power Company, which has since continued to operate the same.

On April 13, 1918, the Colorado Power Company filed a petition with the Public Utilities Commission of the state praying for an order increasing the rates above those provided in the contract to one cent per kilowatt hour.

The Commission, upon hearing, ordered that the rate of 7.65 mills per kilowatt hour fixed in the contract be canceled, and fixed the flat rate of 9.5 mills per kilowatt hour to be charged to the smelting company. We are asked to review that order.

Counsel for the smelting company has very elaborately and ably argued its contention that the decision of the Commission was in violation of the several constitutional provisions suggested, and that the obligation of the contract between the parties was impaired, and that the plaintiff in error was deprived of its property without due process of law, that the statute was retroactive, and that, therefore, the Commission was without power to change or alter the terms of the contract.

The Court says:

#### 224.2—Contracts

"We think without further discussion that it is the overwhelming weight of judicial opinion in this country that the constitutional interdiction of statutes impairing the obligation of contracts does not prevent the state from properly exercising such powers as are vested in it for the promotion of the common weal, or as are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.

"We have heretofore decided this question as to contracts entered into by municipalities in relation to rates to be charged by public utilities as affected by the after-asserted power of the state. *Denver & South Platte Ry. Co. v. City of Englewood*, 62 Colo. 229, 161 Pac. 1514, A. L. R. 956. But a careful review of the authorities leads us to the conclusion that this rule as to the after-asserted exercise of the police power applies equally in the case of contracts relating to a public service as between persons and corporations.

"The rule requires no further citation than that of the latest decided case of the United States Supreme Court called to our attention, where the doctrine seems to be announced as the final word upon that subject by that Court. A further examination of the decisions of the appellate courts from the several states discloses the great weight of authority to be in agreement with the view of the Federal Supreme Court. *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, 39 Sup. Ct. 117, 63 L. Ed. 309. \* \* \*

"It is urged that when the contract in this case was made, and at the time of the extensions, the public utilities statute was not in effect, and that both companies were private corporations with full power to make the contract they did, and for such reason the rule cannot apply. This contention cannot be sustained. In the case cited, quoting from the case of *Louisville & Nashville R. R. Co. v. Mottley*, 219 U. S. 467, 31 Sup. Ct. 265, 270 (55 L. Ed. 297, 34 L. R. A. (N. S.) 671), it was said:

"Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority."

"So we must hold in this case that the power of the Commission to act in the premises must be sustained.

"Conceding, then, the jurisdiction of the Public Utilities Commission, it remains to determine the question of the validity and justice of the order entered. \* \* \*

#### 224—Rates

"The unquestioned rule of law is that what the utility company is entitled to demand in the matter of rates, in order that it may have just compensation, is a fair return upon the reasonable value of its property at the time it is being used for the public. POND on Public Utilities, Sec. 476.

"To ascertain such reasonable value for the purpose of fixing rates and in addition to its net earnings, it is the rule of law that there are four different theories for the determination of what constitutes a reasonable value under the facts of any particular case:

"These theories are generally defined by terms which indicate the method of ascertaining what would be a fair return on the reasonable value of the property, and are thus expressed: Original cost; cost of reproduction; outstanding capitalization; and present value. Since the authorities are not agreed as to the proper theory for determining rates nor as to the manner of applying the legal principle established for that purpose, it is impossible that they should agree on what constitutes a reasonable rate in any case or that any decision in any state should control in other states, although the facts of the case may be similar or even identical, because the courts are not agreed as to the proper theory to be applied for the solution of the question.' POND, Public Utilities, Sec. 477.

"The adoption of any one of these four theories in a given case is attended with great difficulty, and in some cases impossible for any one of them to prevail and justice be done. But so many decisions have been rendered in relation to the proper method of ascertainment of the reasonable value of the property that commissions of this character may be presumed to be fairly enlightened, when considering the particular case, as to whether any one or more of these theories may be justly adopted and for such reason, so that in this case a further discussion of this subject is not important. But it is a necessary prerequisite that a reasonable value of the property at the time it is being used be established. It is then necessary in all cases that this value be considered as a basis for the fixing of rates.

"These rules were both violated by the Commission in the case under consideration; for by no competent testimony did the Commission attempt to establish a reasonable value of the property of the power company, either as a whole, or of the Salida plant as a part thereof.

"The Commission cannot be lawfully excused for this failure upon its part. It is not a court, to consider and determine only that which is brought before it. It is a legislative agent, with certain administrative duties. One of its duties is to investigate and determine in the interest of the state. For this purpose the state has provided it with the proper engineers and other expert assistants to ascertain whatever facts may be necessary or important to justify a conclusion in any case, and this independent of, or in addition to, any testimony produced by the parties directly interested. Indeed, the statute expressly provides that the Commission may investigate and determine as to any rate, rule or regulation, upon its own initiative.

"The sole reason for holding that the power rests with the Commission to increase or decrease a rate stipulated in a contract, and that the exercise of such a power is not an infringement of the constitutional inhibitions against the impairment of a contract or a contract obligation, and likewise the guaranty of due process of law, is that the public welfare demands it in the specific case.

"Therefore, the Commission, with the delegated legislative power of the state, must determine that the rate fixed in the contract is detrimental to the public weal. This is the exercise of a very grave and dangerous power, and should be asserted with the greatest caution, and by means of every instrumentality at the command of the Commission, to determine with reasonable certainty that the rate fixed in the contract injuriously affects the public welfare.

"It is not as if the Commission were to establish a rate in the first instance, as based upon its own judgment as to reasonableness, but it must first determine that a contract in this respect, between persons engaged in the particular business and presumably well advised as to its probable effect, not only at the time but in the light of future conditions, is so unreasonable as to be detrimental to the public interest. \* \* \*

"That the outstanding capitalization can have but little, if any, relation to the value, as affecting the basis for rates, is the accepted rule of the courts. \* \* \*

"The failure to observe this rule in the ascertainment of the value of the Salida plant, upon which the Commission elected to base its order, is as flagrant, if not more so, than in the case of the entire property of the power company. The Commission very properly declined to fix the reasonable value of the Salida plant for rate making as being that of \$500,000, which was testified to by the witness for the power company as the book value, and represented the purchase price. Neither did it fix any other specific value. The Commission said:

"Any adjustment in the rate now being paid by the smelting company must therefore be made on a finding that such rate is preferential and discriminatory as regards other consumers.'

"It will thus be seen that the Commission wholly abandoned the allegations of the complaint to the effect that the power company's rate to the smelter company should be increased because of increased cost of operation and insufficient return on its invested capital in its Salida plant, and determined the matter solely upon a theory that is not involved in the pleadings, *viz.*, that the contract rate with the smelter company 'is preferential and discriminatory as regards other consumers.' This question was not only not involved in the pleadings, but wholly without sufficient proof to sustain a finding that there was discrimination in favor of the Salida smelter alone. It is palpable that, if there is such discrimination as affects the public welfare, it applies equally, at least, in the case of the Leadville smelter, which the Commission used only in comparison. And here is where the Commission unnecessarily got into deep water by abandoning the universal rule of the courts to the effect that the basis must be the reasonable value of the property at the time. It was clearly within its own power, by the use of its skilled assistants, to reasonably ascertain this value. \* \* \*

"The testimony is clear that, when the contract was made, the Salida smelter, the grantor of the power company, was supplying only the City of Salida, and that it had a surplus of power equal to and in excess of the power required by the Salida smelter; that the contract was solicited by the Salida Light, Power and Utility Company in order to find a market for its unused capacity; that the light and power company generated its electrical energy solely by water power, except that it had one steam plant for use in case

of emergency; that the smelter was at the time furnishing its own power by means of its own plant; and that in order to use power furnished by the power company, it became necessary for the smelter company to abandon its steam plant and to install electrical appliances at great cost. It is clear also that, aside from power furnished the Denver and Rio Grande Railroad Company at Salida, a comparatively small amount, the power company installed steam plants and extended lines and incurred other expense in order to supply mining and other industrial companies at great distances from its plant, which proved to be unprofitable. It is also clear that in so doing it incurred the greater part of the expense of its added improvements and increased operation subsequent to the acquisition of the Salida plant. Such improvements are estimated at \$113,000, or more than one-half of the value of the present plant, as that value was proposed to be established by the smelter company. It appears also that the power company made these improvements and extensions without having obtained the approval of the Utilities Commission, or obtaining a certificate of necessity, in direct violation of the statute. It is the very purpose of the statute in this particular to prevent the burden to the public which may arise by reason of speculative or unnecessary extensions and improvements, by means of an investigation by the Commission and the granting of a certificate of necessity.

"The power company had no lawful authority to make such extensions and improvements, and did so in plain violation of the law. If, therefore, it made an unprofitable investment, it must bear the burden, and will not be permitted to charge it to the public. It appears that the claim for increased cost in operation of the Salida power plant is based chiefly on the cost arising by reason of such extensions and improvements and the added cost of steam power used in the operation of the same.

"It is not the purpose of the Public Utilities Law to make the state the insurer of unlawful, unwise or unnecessary investments by public utilities corporations, and in the absence of the required certificate of necessity, and certainly in the absence of clear proof to the contrary, we must presume that such extensions were at least unnecessary. \* \* \*

"To pay the rate fixed by the Commission will either compel it to cease operations or increase the price of treatment to its customers. It is a competitor of the Leadville smelter. Such is the testimony in these particulars.

"It cannot be said that to sustain one public utility at the expense of another is in the interest of the public welfare and, if we are to rely upon the showing here, this must be the result, if the order of the Commission is to be sustained. Yet the interest of the public weal is the only theory upon which the Commission can exercise the power to abrogate the contract between the parties. I may repeat that this power is so grave, with such possibilities of being erroneously exercised through want of proper understanding of the facts and of the principle upon which it is based, that it should be denied or greatly curtailed by an amendment to the statute.

"The Commission in this case made no investigation of its own, and determined the matter wholly upon the testimony of the contending parties. In such a case the burden is upon the petitioner clearly, which it has not sustained. The sufficiency of the rate prescribed to produce a fair profit upon the value of the property employed in the business is to be strongly presumed. The burden of showing its confiscatory character rests, therefore, upon the complaining company. *Lincoln Gas Company v. Lincoln*, 223 U. S. 349, 32 Sup. Ct. 271, 56 L. Ed. 466. The presumption must be correspondingly stronger where the rate rests upon a contract between the parties, understandingly entered into.

"The order of the Commission is reversed, with instructions to dismiss the proceedings."



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No. 6

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### OREGON

#### 224—Rates.

Portland Railway, Light and Power Company. Application for Authority to Increase Street Railway Fares in City of Portland. Decision of the Oregon Public Service Commission, Granting an Increase, March 23, 1920.

The Portland Railway Light and Power Company applied to the Commission for permission to increase fares on the street railway lines in the City of Portland, and the Commission says:

“Based upon the figures presented by the City’s witness in the foregoing report, it becomes apparent that additional net operating income must be provided to assure continuity of the operation of the street railways. This may be accomplished either by an increase in fares or a reduction in expense. The problem before the Commission is to determine in what manner this deficiency can best be overcome.

“Primarily there can be no question as to the authority of this Commission to increase fares, if that is to be the remedy applied; but if relief is to be secured through the medium of reduced expense, the Council of the City of Portland and the voters of that municipality hold the key to the situation, and are vested with the power and authority to afford full, adequate, and we believe, permanent relief. \* \* \*

“The Commission, however, is reluctant, under present conditions and circumstances, to attempt to remedy the situation merely by increasing fares; we seriously doubt whether any fare would result in a complete and final solution of the difficulties of the Portland Street Railway System at this time. It is our opinion that any solution now attempted should have the elements of permanency, and further discussion will be directed toward that end.

“Since the beginning of the war there has been a continuous succession of increases in prices of both material and labor. These

increases have called for additional revenues, which resulted in many or most of the regulating bodies increasing the fare one, two, three and four times, with consequent disturbance of economic relations, and as the rate increases these disturbances and existent inequalities become more apparent. During reconstruction all inequalities and irregularities must, where possible, be eliminated; and this is particularly true as to the street railways.

"Observations of results in the various cities of the United States where repeated fare increases have been established lead us to the belief that this is neither the solution nor the proper remedy to be applied when it can be avoided. The history of these fare increases would seem to indicate that one increase calls for another. We have before us in this case a compilation showing the cities in which fare increases have been made. This indicates that 164 cities now have a six cent fare, 100 cities have a seven cent fare, 16 cities have an eight cent fare, and 59 cities have a ten cent fare. It is interesting to note that the seven cent fares came almost invariably as the result of a second application, the eight cent fare on the third application and the ten cent fare on the fourth. At ten cents the maximum seems to be reached, and yet it is questionable as to whether the companies applying the ten cent fares have sufficiently benefited to have warranted its application, in lieu of other remedies.

"It would appear that a logical deduction might be that increased fares do not, in many instances, accomplish the full purpose for which they were designed. Increase in fare never brings a proportional increase in revenue. It is also apparent that high fares lessen the value of a street railway system to a community, for when fares restrict riding the street railway ceases to perform its proper function. When fares exceed what the average car rider can conveniently afford to pay, the man who uses the cars as a convenience ceases to ride and only the necessity patron remains. Even he seeks an alternative method of transportation. Failing in that, employment is sought within walking distance of his home or his residence is moved, where possible, within walking distance of his employment. He makes less frequent trips to the business section of the city to make purchases, to attend places of amusement or to make use of educational facilities of the city. He makes fewer trips to visit friends. The result is detrimental not only to the Company and the individual citizen, but to the business institutions of the city and to the civic and economic welfare of the municipality as a whole.

"This seems to be the conclusion reached in the State of Massachusetts, where the problem of street railway fares has received a great deal of consideration. The Massachusetts Public Service Commission said in a recent case involving the fares of the Bay State Street Railway Company, that:

“Street railway fares have been more frequently and more generally raised in Massachusetts than in any other part of the country; and while it cannot be said that no advantage to the companies has resulted, it is true that in nearly every case the gain in revenue has been less—and often far less—than the prior estimates. Other factors have entered in, but making all due allowances, it is quite clear that increases in fares impose a burden upon the public which considerably exceeds benefit which they bring to the companies.” (P. U. R. 1919 A 817.)

“It is our belief that increased fares do not produce full and proper measure of relief, and it is our opinion that in this case they would result in increasing an already unjust burden which the car rider is required to bear.”

During the year 1919, more than 400,000 free rides were given to City employees under a franchise requirement, which would yield at the ticket fare of 5½ cents in excess of \$22,000. The Commission says:

“If the value of the services of these employees to the City is enhanced, and the necessities of their positions require frequent car rides, then the City should properly provide for their transportation, either through salaries or the purchase and furnishing of tickets. Certainly the practice of requiring the fare paying car rider to furnish the ride is untenable.”

### 380—Taxation

“These charges and burdens are the outgrowth of the custom which has heretofore prevailed of placing upon the public service corporations as great a portion of the public burden as was possible. In more recent years, however, with the advent of public utility regulation, the fallacy of this practice has been repeatedly demonstrated.

“Other regulating bodies have been confronted with this same problem, and efforts are being made throughout the entire country to eliminate these objectionable features. In a recent case wherein this subject was involved, the Public Utilities Commission of Rhode Island said:

“Throughout the country it seems to be clearly the consensus of opinion on the part of those who have made a study of the problem, that the trolley companies should be relieved of franchise tax payments, and the obligation to pay for pavements, which are, in effect, an indirect tax upon the car rider. Increased fares have an immediate tendency to centralize population and decentralize business, clearly a social and economic mistake. The problem can only be solved by the systematic cooperation of the state, the municipalities, the public, and the Company. Old prejudices must give way to the facts of the present situation if trolley service is to be maintained.”

(Public Utilities Commission vs. Rhode Island Company, P. U. R. 1919 F-744.)

"This is apropos in the instant case. If adequate car service is to be continued at a minimum rate of fare the car rider and the general public must forget such prejudices as they may have had and adapt themselves to the situation as it exists today under regulation, where the welfare of the car rider and the public is analagous to that of the Company. The ultimate end desired is to increase the revenue without increasing unequal burdens. The present complication might be viewed as a three-cornered partnership wherein ignoring one would be disregarding the interests of the others. Demands from one that are discriminatory in operation against his partners, become exactions in effect, which work toward the disruption of the system, and failure of the plan is inevitable.

"These so-called burdens, paving, bridge rentals, franchise taxes, car license and free transportation, are more directly under the authority of the municipal officers of the City of Portland, and an amendment to the charter will be required to relieve the car rider from payment thereof.

"We believe that the present charter and franchise provisions by which the general public profits at the expense of the car rider, are unfair, unjust and discriminatory and this Commission earnestly urges that through proper procedure the car riders of Portland be given further opportunity, at the May elections, 1920, to voice their sentiments through the ballot in relation thereto."

The Commission concludes :

"The topic of street railways has been the subject of broad discussion since the beginning of the war. Beyond doubt, the question is a serious one and, since the National Administration has refused to interfere, it devolves upon the states and municipalities to solve. In the State of Oregon, this duty is by law imposed upon this Commission, as a tribunal constituted to hear and determine the applications of public utilities. To perform this function the Commission is presumed to use average intelligence guided by reason and justice, and its orders have that judicial standing in law that warrants enforcement until there is a reversal by a higher judicial tribunal. Our vision, therefore, should not be so circumscribed as to prevent us from following new and practical plans.

"The Commission finds no appreciable difference between this application and the many others it has had under advisement in previous years, but times have changed. People and governments are becoming more progressive. Justice must prevail if we desire to preserve the utilities, industries, and our country.

"If Portland is to continue to advance and hold its place among the

larger cities of the West, an efficient system of rapid transit is indispensable and must be maintained. Failure of such system would prove not only injurious to the reputation of the City, but would also redound to the detriment of the business interests and the people generally.

"Were this Commission obsessed with the idea that an immediate increase in fares is the one and only solution for the transit problem, an order to that effect could readily be issued. Such action might, however, be construed as an attempt upon our part to influence, by duress, the votes of the electorate, and we believe it ill advised to take any action which might be so interpreted. We believe the voter should be allowed to express his views upon the principles involved in this situation, uninfluenced by any order issued fixing fares.

"We are suggesting the car rider, in these extraordinary times, have his prerogative as a citizen to exercise his right to suffrage, and an opportunity to participate in this municipal regulation; a chance to say whether or not the streets and bridges of Portland were dedicated to one class to the exclusion of himself, and go further to say whether the car tracks are part of the streets occupied, and therefore to be owned and maintained as other streets of the City of Portland.

"We are not prepossessed with municipal ownership and operation of the street car system as a whole, but we do believe that the street car tracks are part of the streets of Portland, and as such these streets should be owned from curb to curb and maintained as any other streets. In the purchase of the tracks and the relief of the public burdens lies the prospect of a reduced fare and the taxpayer's opportunity to assume an equitable proportion of the expense of the transit system.

"When such a plan as herein outlined can be offered to the people for an expression of their sentiment, it is clearly our duty to allow those who bear the burden an opportunity to indicate their desires. We believe that in a period of reconstruction, such as the country is passing through at this time, we should be fully advised of the desires of the majority of people affected before attempting to employ methods which experience teaches have generally failed to produce the desired effect.

"There is a distinct sentiment at this time on the part of the public to remedy the situation, and we are of the opinion that the electorate should, very properly, especially in view of the impending election, be now afforded the opportunity to consider and promptly decide the question. To do otherwise would be bureaucratic.

"After a full consideration of all phases of the subjects herein presented, the Commission is of the opinion that final action herein

should be held in abeyance, and the matter continued upon the dockets of the Commission for such further action as may be found meet and proper in the premises, and it is so ordered."

### **PENNSYLVANIA**

#### **129.1—Discrimination.**

City of Franklin, et al, v. United National Gas Company, Complaint Alleging That Respondent Company Threatens to Discontinue Supplying Natural Gas Free or at Reduced Rates as Specified in Franchise. Decision of the Pennsylvania Public Service Commission. Dismissing the Complaint. February 3, 1920.

"Since the passage of the Public Service Company Law, the property of every public utility in Pennsylvania must be considered from the viewpoint that it has been taken out of the domain or realm of private property and set aside for public service, that it has been impressed with a trust character, and no longer has the right to make speculative profits. It must be content with earnings as restricted by law. Its property is set aside for public service. To such extent and in such detail is state regulation of public utilities carried that their operations are subjected to careful inspection to ascertain and eliminate all unnecessary or excessive charges. Uniform methods of accounting are prescribed that accurate information may be readily obtained. All rates must be uniform; just, reasonable, non-excessive, and not unjustly discriminatory. Earnings are restricted and computed upon a basis generally termed 'fair value,' in which is included only used and useful property. The public is to be protected in every particular, the Federal and State Constitution safeguarding the utility's investment from confiscation.

"As to the contention of the complainants that the Public Service Company Law does not apply to municipalities because of the statement in Article I, that the term 'corporation,' as used in the act, shall not include municipal corporations except as otherwise provided therein, we are clearly of the opinion that, so far as service and collecting of rates by utilities are concerned, its provisions apply to municipal corporations the same as to individuals. It will be sufficient answer to this contention to call attention to the fact that a large amount of service is rendered throughout the state to municipal corporations by public utilities, and that such service is being paid for at the lawfully established rates. If utility sought to charge a municipality for its service more than it did individual patrons for the same service, on the theory that municipal corporations are not included in the provisions of the Public Service Company Law, we apprehend the attitude of complainants and other municipalities would be that the utility could not seek refuge behind such a proposition. It is manifest that all service rendered by a



public utility must be paid for according to the provisions of the Public Service Company Law in compliance with the established rates of the utility.

"As to the effect of a contract made by a public utility with a municipality or individual, either before or after the enactment of the Public Service Company Law, in which are prescribed conditions limiting charges for service or providing for free service, we think the Commissions and Courts, both State and Federal, have adjudicated the rights of the parties that it may be taken as the accepted law that no conditions in any contract made by a public utility affecting its rates preclude the Public Service Commission from inquiring into their reasonableness. \* \* \*

"Some municipalities have in the past, and now are, requiring utilities to which franchises are granted, or with which contracts for public service are made, to furnish to a greater or less extent for municipal purposes free service (service that is rendered to the municipality by the utility at a reduced rate or for which no payment is made). Presumably, this is done on the theory that the municipality has the right to receive from the utility a consideration for the privilege of occupying its streets and doing business within its limits. It must not be overlooked, however, that municipalities are the creatures of statute and can exercise only such rights as have been delegated to them, including the right, to a limited extent, as applied to their local affairs, to exercise the police power in the interest of the public welfare, subject, however, at all times, to the supervision by the courts as to the reasonableness of such police regulation and the superior right of the legislature to limit or restrict the same. A municipality can only enact and carry into effect such measures for raising revenue necessary to conduct its affairs as provided by statute. The right to raise revenue for municipal purposes can never be implied. In the restricted exercise of the police power by a municipality it may collect a reasonable license fee from public utilities, not for general revenue purposes, but for the purpose of enabling it to properly inspect and regulate such utilities. Such license fees can, in no event, be made a source of general revenue, and can only be collected by uniform and reasonable rules and used for the purpose collected.

"By free service is meant, service the cost of which is paid by another. The service which is rendered to a municipality without any consideration being paid therefor costs the utility the same amount and to the same extent as any other service of like kind and amount rendered by it. If any service is rendered by the utility free, or at a reduced rate, it necessarily must be paid for by some one, and the burden of its cost is imposed upon other shoulders. The service of a utility, like its property, cannot be misapplied.

"If we have correctly stated the status of public utilities and municipi-

palities in our state, with their rights and powers circumscribed in the manner and to the extent indicated, how is it possible, under the provisions of the Public Service Company Law, in any aspect of state regulation, for utility to render service without receiving the proper, reasonable and nondiscriminatory rate consideration provided therefor? A careful examination into every provision of the Public Service Company Law does not disclose any exception in its broad and comprehensive provisions which permit it to be done. On the contrary, in our opinion, a proper interpretation and application of its provisions prohibit the rendering of any service by a utility except it be paid for according to its lawfully established rates. \* \* \*

"Courts and Commissions in other states have held that free service, or service at a reduced rate, cannot be furnished by a utility, as will appear by deference in the following cases:

"Sandpoint Water & Light Co. v. Sandpoint (Idaho) P. U. R. 1918F, 737, 173 Pac. 972, L. R. A. 1918F, 1106; Re Hanover Water Co. (N. J.) P. U. R. 1918D, 824; Louisiana v. Louisiana Water Co. (Mo.) P. U. R. 1918B, 774; Re Portland Water Dist. (Me.) P. U. R. 1917D, 907; Board of Education v. Oram (N. J.) P. U. R. 1916E, 100; Farmington Chamber of Commerce v. Teleph. & Teleg. Co. (N. M.) P. U. R. 1915F, 625; Melvern Tel. Co. v. Carbondale Tel. Co. (Kan.) P. U. R. 1915B, 216; Re Dakota & Central Teleph. Co. (S. D.) P. U. R. 1915D, 1054; Re Galveston Waterworks Co. (Ind.) P. U. R. 1915E, 27; Landen v. Lawrence (Kan.) P. U. R. 1915E, 763; Re Warren (Ind.) P. U. R. 1919F, 38.

"The Commission has, in the past, approved contracts submitted in which there has been included to a greater or less extent service to be rendered by the utility to the municipality, either at a reduced rate or without the collection of any rate therefor, where no complaint was made or question raised as to such contract.

"A contract requiring a utility to render free service, which necessitates the collection of the cost thereof from its other patrons, or which results in rendering service for a less compensation or sum than is collected from other patrons for a like contemporaneous service under substantially similar circumstances and conditions, is an unjust discrimination, and such contractual provision is, therefore, violative of the provisions of the Public Service Company Law. \* \* \*

"The conclusion of the Commission, therefore, is that the free service provided for in the contract specified in the complaint of Vernon township is on the same basis as the free service provided for in other contracts.

"All the complaints in this case are to the effect that free service provided in contracts made with the respondent company has been

discontinued. The contention of respondent is that the rendering of free service provided by the terms of said contracts in varying amounts necessarily imposes the cost thereof on its other patrons, and thereby results in an unjust discrimination.

"In view of what we have herein said, the conclusion of the Commission is that the free service provided for in the contracts between complainant and respondent, or service at less than the filed rate, if rendered, would work an unjust discrimination against other patrons, and that the provisions of the Public Service Company Law prohibit the rendering of free service where the same works an unjust discrimination, and the law in its application to such a situation makes no distinction between a municipality and an individual. The complaints, therefore, are all dismissed."

### **NEW YORK**

#### **132—Protection From Competition.**

Ausable Forks Electric Company, Inc., Application for Authority to Construct an Electric Plant in the Town of Jay, Essex County. Decision of the New York Public Service Commission (2 D), Denying the Application. January 27, 1920.

The hamlet of Ausable Forks has about 2,100 inhabitants, and is located on both sides of the Ausable River, one side being in the town of Black Brook, Clinton County, and the other side being in the town of Jay, Essex County.

On March 11, 1911, a franchise was granted to the Keeseville Electric Company (now the Northern Adirondack Power Company) by the local authorities of the town of Jay. August 24, 1911, the Public Service Commission approved the exercise of a franchise by the Northern Adirondack Power Company in the town of Jay, and on December 6, 1911, an order was made authorizing a mortgage and issuance of bonds to extend the Company's line to Ausable Forks and construct a distribution system therein. The line was extended to Ausable Forks and the distribution system was constructed on the Jay side of the river. August 12, 1912, the Northern Adirondack Power Company was granted a franchise in the town of Black Brook. November 13, 1912, the Public Service Commission granted permission to the Northern Adirondack Power Company to exercise a franchise in Black Brook. The Company did not develop the Black Brook side.

In 1897, the J. & J. Rogers Company, a manufacturing company, installed a small lighting plant for the purpose of lighting the company's store. Later, current was carried to a small hotel, then to residences of certain officers of that Company. From this small beginning there gradually grew up a substantial electric business in Ausable Forks.

December 12, 1912, the Northern Adirondack Power Company filed a complaint with the Public Service Commission against the J. & J. Rogers Company, objecting to the latter Company engaging in the electric business, as it was a business corporation and without legal authority to engage in such business.

These rival companies continued in the electric business until a decision of the Supreme Court, June 22, 1918, declaring the J. & J. Rogers Company had not the right to engage in the electric lighting business (Public Service Commission, 2nd Dist., v. J. & J. Rogers Co., defendant, and Northern Adirondack Power Co., intervenor, 103 Misc. 711, P. U. R. 1918F, 332, 170 N. Y. Supp. 964). This decision was appealed to the appellate division, and affirmed (184 App. Div. 705, P. U. R. 1919A, 876, 172 N. Y. Supp. 498).

On September 20, 1918, the Ausable Forks Electric Company, Incorporated, petitioned the Public Service Commission for permission to acquire property and to exercise franchise rights in the town of Jay, Essex County; to take over the physical electrical equipment and rights of the J. & J. Rogers Company, and to issue stock to the extent of \$25,000 for the purchase of such electrical equipment and rights, and to purchase water power, waterwheel and generator.

The Commission says:

"No such 'rights' to do an electric business can be taken over as the J. & J. Rogers Company had no such rights. \* \* \*

"The Commission should give protection to the business of utility companies that have been duly authorized to enter the utility field, and have made expenditures relying upon that authorization at least to the extent of protecting them against ruinous competition. Such competition, while it works to the temporary advantage of the public, is, in the long run, disastrous to the public and to both companies. This protection should certainly be thrown about a company that gives or can be made to give good service. There are two reasons for this rule. It tends, in the long run, to give a steadier, better service to the public, and it is also fair to those who enter a new field and build it up that they should profit by their initiative and energy, and be allowed to reap the financial fruits of their labor. In this case—regarding this applicant as being in the place and stead of the J. & J. Rogers Company and successor to that company's duties and equities—the second reason does not apply. The J. & J. Rogers Company was first in the field and had it partly developed. The apparent equities between the companies would seem to warrant a decision that both companies be returned to the status quo ante, each with a free opportunity to develop according to the capacity of each.

"Right at this point in the logic of the case comes the stumbling

block. It may be assumed that with the power of the J. & J. Rogers Company in Ausable Forks and in view of the recent past and present attitude of those who control these rival companies, such a free competition would probably mean the wiping out of the Northern Adirondack Power Company, so far as its business in Ausable Forks is concerned, and the use and value of its transmission line to that point, with consequent disastrous results to the Company. The Northern Adirondack Power Company is, in Ausable Forks, under authority of this Commission. Its securities, issued under like authority, are outstanding, and the Company's business and its securities should have reasonable protection. The Commission should not give its consent to the exercise of a franchise allowing free and unrestricted competition between these rival companies.

"The question has been raised as to the relative capacity of these rival companies to serve the public. It may be fairly found that the Ausable Forks Electric Company, because of its connection with, and backing of, the J. & J. Rogers Company, and because of its having access to the latter Company's sources of power, would have a larger amount of power and of a more dependable character than the Northern Adirondack Power Company can develop at its plant; that the Northern Adirondack Power Company has not rendered first class service at times, although it is only fair to say that its service is steadily improving, but will be subject to such interruption and fluctuations as are necessarily incident to dependence upon a single water power and a single transmission line. Ausable Forks has electrical fire fighting apparatus. Several sources of power would give additional protection in case of a large fire. A single source of power and a single line might prove sufficient, but if either the source or the line failed in such an emergency the results would be extremely serious. Complaints against the service of the Company have been quite numerous in the recent past, but it appears from the nature of the complaints that they are due, at least in part, to the desire on the part of some portion of the population of Ausable Forks to favor the Ausable Forks Electric Company as against the Northern Adirondack Power Company.

"One of the chief reasons heretofore urged by the J. & J. Rogers Company in its own behalf was the amount of free lighting, particularly free public lighting, which that Company had furnished and was furnishing in the hamlet of Ausable Forks. The petitioner urges the same reason in its behalf and agrees, if permitted to exercise its franchise and construct its lines, that it will furnish substantially the same free lighting. If the Northern Adirondack Power Company had been in the field first, and had developed the field, a proposition of the above nature should have no weight in opening the field to the company proposing it. Free lighting to some customers, no matter who the customers may be, is in its essence an

unjust discrimination. Of course, there may be an exception to this rule where the contribution comes solely from the pockets of the owners of the company and does not affect adversely the rates of the paying consumers and the integrity of the utility.

"The former giving of free lighting and the petitioner's agreement to continue free lighting should have no weight in determining the issues raised in this proceeding. If a company has the right to contribute such free lighting as it desires, under the above conditions, it also has the right to refuse free lighting at any time and whenever its owners so determine. As to the agreement which petitioner states has been entered into with the J. & J. Rogers Company, whereby, among other things, petitioner agrees to continue the free lighting of streets, public buildings, etc., as heretofore furnished by the J. & J. Rogers Company, and to furnish power for fire fighting apparatus in the hamlet of Ausable Forks free of charge, as was done by the J. & J. Rogers Company heretofore, it is questionable whether a public utility can bind itself by such a contract to carry out an agreement which may, in the future, under different conditions or under different ownership of the J. & J. Rogers Company, cause an undue and unfair burden to fall upon the owners of the petitioner. However, as that is not a provision in the franchise, but in the agreement between the J. & J. Rogers Company and the petitioner, it is not necessary at this time to make a determination as to same.

"All of which leads naturally to the conclusion that where private interests are in such bitter conflict over a public utility business, due regard for the public interest as well as the fair equities between the parties themselves, would bring about a merger of companies or some other mutual handling of the business, particularly where there are equities on both sides.

"Long and strenuous efforts were made by former Commissioner Carr, and have been made by the sitting Commissioner in this case to bring about some practical and fair solution. Letters were received from the conflicting interests on January 3, 1920 and January 13, 1920, stating that the rival companies cannot agree upon terms.

"The Commission being without power to compel a merger or an agreement mutually satisfactory and protective, only one practical decision seems possible. As the granting of a petition to exercise such franchise without limitations would undoubtedly result in the wiping out of the Northern Adirondack Power Company to the extent above mentioned, an order should be made denying, at this time, consent to the exercise of the unlimited franchise as it is now presented, but without prejudice to the Ausable Forks Electric Company, Incorporated, to present a franchise limiting its operation

to substantially the business done by the J. & J. Rogers Company at the time of the construction of the transmission line of Northern Adirondack Power Company to Ausable Forks. This permission to present such a limited franchise is not to be regarded as an expression of opinion at this time by this Commission that consent to exercise such limited franchise will necessarily be given."

## REFERENCES

### INVESTMENT AND RETURN

#### 310—Valuation.

Elements in Valuation of Public Utility Properties, by Thomas E. Phipps. Electrical Review. April 3, 1920. p. 568, 3½ pages.

The writer discusses the factors entering into the determination of valuations. He says:

"Valuations are usually made for the purposes of rate regulation, purchase and sale, taxation, capitalization; and may also be made for the purposes of negotiation of loans, and securing of additional vested rights.

"The first four purposes enumerated are those for which official valuations of the property of public service utilities are made, and due to the activities of commissions attention is most frequently called to the first of the four—that of valuations for rate regulation.

#### 313—Unit Prices

"Present cost of construction' has been enumerated as a factor to be found and considered, and to meet this requirement is one of the reasons for making an estimate termed the cost of production. Where cost of property is unavailable from accounting records, cost of reproduction has been of particular value in that it reflects within reasonable limits the actual cost of the property. This is particularly true where the prices applied in arriving at costs of material and labor have been determined historically or from actual performance with reference to the construction of the property being considered. It has been customary to find weighted average prices, say of a 5-year period immediately preceding the date of the appraisal.

"During an extended period, prior to 1914, and for a sufficient length of time to cover the life of many of our properties, there has not been such marked variations in the prices of material and labor and in labor conditions, but that costs based upon a 5-year period would not closely approximate the actual costs incurred, and found upon the accounting records where such records were available. This period, now termed the pre-war period, and the smaller range in prices, have resulted during the past 5 years in the fallacy of continuing to use averages taken from the pre-war period and terming them 'normal prices.' As a matter of fact, there is no such thing and the term is a misnomer. It was probably based upon an assumption that the costs of material and labor would shortly revert to those prevailing prior to the war.

"Our own nation, and most of the other nations, in the past five years have enormously inflated their currency, and a purchasing power permitting the reversion to former conditions with regard to costs is in the remote future, even if it is ever again to be experienced. There is no present condition that shows any tendency other than to continue at the present high level, and we

are logically bound to expect future material and labor costs and conditions to parallel those of the present rather than of the pre-war period. Consequently, a cost of reproduction based upon prices of a pre-war period can only be used for one purpose, and that is to supplement the cost of property or to reflect it where accounting records are not available. As for showing the cost of reproduction new, such a result would be unfair in that it would be misleading and far short of the result that should properly be shown.

"Cost of reproduction is usually made the basis for the computation of the depreciation allowance to cover renewals and replacements. The fact should never be lost sight of that the costs of material, labor and equipment necessary to provide such renewals and replacements are always present-day costs and not costs which may have prevailed at some time in the past. Furthermore, the cost of reproduction, less accrued depreciation, which is presumed to meet the requirement to find the 'cost of the property in its present condition,' is quite materially affected. Other than reflecting a condition of plant indicating the ability to render efficient service, this result is a rather questionable factor in the determination of value for rate-making purposes, but it is of prime importance as a factor in the determination of value in a case of purchase and sale.

"It might be well to call attention to the fact that cost of property, cost of reproduction, and cost of reproduction less accrued depreciation, all represent cost, and that while they are factors in the determination of value neither of them is value, nor should be taken as value, regardless of the fact that in many cases of courts and commissions such a fallacy has been indulged.

"It seems that almost every one of the several commissions throughout the country have in the past been following the erroneous practice of finding cost of reproduction, less accrued depreciation, as value. While much mischief and loss has resulted from such procedure, the same bodies are, in the main, seeing the light and summoning the courage to repudiate these earlier blunders, and no longer tend to indulge in such misleading findings of value in rate cases. \* \* \*

The writer concludes:

"By way of summary, it is desired to call attention to the necessity of first considering the purpose for which the valuation is to be made before attempting to determine those elements which are really factors. In no case should cost be mistaken for value. Engineers should always be mindful of the fact that courts and commissions are dependent upon them for the principal elements necessary in the intelligent determination of value in all cases, and earnest and honest effort should be made to set out all facts clearly and fully, else decisions are bound to follow which will result in serious injury to the credit of the utilities involved. And further, that since these utilities are not only the pioneers, but the leading agents, in the continued development of communities, injury to the public served must also follow."

## PUBLIC SERVICE REGULATION

### 253—Commission Reports of Decisions.

Maryland Public Service Commission Report for the Year Ended December 31, 1919. Volume 10. 564 pages.

The report contains the opinions and orders of the Commission and the opinions of the general counsel for the calendar year of 1919, and statistics from annual reports of utility corporations as of September 30th, 1919.

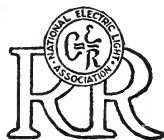


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**Rate Research**

<b>Vol. 17</b>	<b>MAY 13, 1920</b>	<b>No. 7</b>
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# Rate Research

Vol. 17

New York, N. Y., May 13, 1920

No. 7

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### CALIFORNIA

#### 630—Cost of Supplies

Southern California Edison Company, Application for Authority to Increase Its Rates for Electric Service. Decision of the California Railroad Commission, Granting an Increase. April 15, 1920.

The Southern California Edison Company, on February 27, 1920, filed with the California Railroad Commission an application for a temporary increase of 32½% in its rates, alleging that the unexpected subnormal rainfall conditions in California this year, making three successive years of subnormal precipitation, have seriously affected the output of hydro-electric plants in the state, causing unusual increases in operating expenses to make up the deficiency.

On April 15, 1920, the Commission allowed the Southern California Edison Company a temporary increase in all its rates of 27% to become effective April 20, 1920, until the end of the year. The new rates will yield the company a 7% return on its investment. Concerning the increase, Commissioner Edgerton, President of the Commission, who presided at the hearing held in Los Angeles, says:

"It is vitally necessary for the continued growth and prosperity of the vast territory in Southern California supplied by applicant with electric energy that its full program of development go forward without serious interruption. We believe it to be in the interest of the consumers that they pay rates sufficiently reasonable to enable the company to earn a fair and reasonable return upon the actual investment. Unless this is done, it is plain that the utility cannot borrow sufficient funds to carry forward necessary developments. It is of great importance that this program of development go forward. Should there be any halt in this program it is evident that tremendous losses will result to the whole community, if sufficient electric energy is not developed to meet the growing demands.

"It is becoming increasingly evident that the business life of a community such as Southern California is in a very large measure dependent for its growth and expansion, and in some instances even its continued operation, upon electric energy, and as the cost of steam

generation is constantly increasing the necessity for the cheaper production of electricity by hydroelectric development has become more and more recognized. Of course, it is not to be understood that the railroad commission urges the payment of unreasonable rates to stimulate investment in this public utility, but when it is considered that to place this company in a position where it can successfully finance will not result at this time in even an 8% return on investment, it will at once be realized that the burden upon the consumer is not unreasonable.

"In considering the granting of an increase in rates of the amount herein contemplated, we are especially mindful of the fact that applicant has been diligently active in the enlarging of its production and transmission facilities since the consolidation of the properties in 1917. It has shown an active determination to carry on development and from the evidence presented has exerted every reasonable effort to meet the demands of the territory served in the face of difficulties arising from the war period of 1918 and period of readjustment and high cost of money, material and labor which have continued since. Applicant's evidence shows that it has definite plans for the development of both water and steam power for at least eight years in the future, and at an estimated cost of \$100,000,000."

### MONTANA

#### 300—Investment and Return

Mission Range Power Company, Application for Authority to Increase Rates. Decision of the Montana Public Service Commission, Granting the Application. February 20, 1920.

The Mission Range Power Company filed its application for a revision of rates granting increases sufficiently to meet increased expenses and a fair return upon the investment. Subsequently thereto certain consumers of the utility, including the City of Polson, called the Commission's attention to various phases of the service furnished and demanded revision of, or explanation concerning same.

The Commission says:

"Prior to these acts the power company had filed its initial schedule of rates, pursuant to statute, but none of these rates, though grounded on franchise requirements, ever received the Commission's approval, because of their unsound structure. For example, services were improperly balanced—the residence consumer was paying a maximum rate of 12 cents per kilowatt-hour against the merchants' rate of 6.5 cents per kilowatt-hour. Giving full force to the inherent difference between the two classes of service, no convincing reason is offered for the spread indicated. Owing to early closing precluding consumption by stores of more electricity than residences, of the limited number of merchant consumers, and of the extra installation cost of furnishing such service, both services more nearly approach an identical theoretical cost, demanding substantial identity in reve-

nue charge. The filed schedule gives the merchant undue preference as against the residence consumer. Again, it seemed certain that the company's charge of 1 cent per kilowatt-hour for municipal pumping service was below the cost of production.

"All these things determined the Commission to make a physical valuation of the properties of the utility, for by that method alone could a scientific basis for rate-making purposes be arrived at. This valuation was accordingly made by the Commission's engineer, and the conclusions therein reached are not seriously contested by either the utility or its consumers."

#### 314.22—Franchises

"The utility values its franchise, which has twenty-one years to run, at \$10,000. For rate-making purposes this sum must be eliminated. A franchise of the character involved is a gift of the people. The only value that may be legitimately allowed it for the purpose mentioned is that actually expended in lawfully securing the franchise. This rule, heretofore adopted by us, is briefly stated by the Illinois Commission:

" 'Only amounts prudently expended for franchises should be included in the sum upon which a public utility should be allowed a return.' *Re Chicago, N. S. & M. R. Co.* P. U. R. 1918 A, 388. And see *Re York County Water Co. (Me.)* P. U. R. 1918 F, 591; *Re United States (Cal.)* P. U. R. 1918 C, 253.

"The application of the rule reduces the franchise valuation from \$10,000 to \$575 properly spent for attorneys' fees and advertising prior to the election."

#### 310—Valuation

"After carefully weighing the elements to be passed into the valuation aggregate, both as to their propriety and their respective values, thereby eliminating certain elements from each of the aforesaid appraisals, and adding other elements properly and legally allowable, but not included in either appraisal, the Commission is of the opinion that for rate-making purposes the value of the plant of the Mission Range Power Company should be, and it is hereby, placed at \$120,000. The plant is practically a new one, with the exception of the distribution system in the city of Polson, and this particular property has, since its purchase from the Northern Idaho and Montana Power Company, been essentially rebuilt, in a period of inflated material costs."

#### 350—Total Revenue, Expense and Income

Investigation of operating conditions for the period of three years and seven months, ending with July 31, 1919, discloses the utility has earned during the whole period, only \$5,018.25 over and above actual operating expenses, to apply on requirements of \$10,500 interest on bonds, besides

an additional sum required for interest on the \$25,000 construction indebtedness. The Commission says:

"This gross earning leaves a deficit on the bond requirements of \$5,481.75, with no allowance whatever for a return on the investment. The utility has been able to function, in this critical condition, first, because its creditors have refrained, appreciating the public interest at stake, from exacting their pound of flesh, and, second, because the utility itself resorted to the expedient of appropriating funds properly the subject of conversation in a depreciation reserve, to the part payment of interest indebtedness.

"In computing operating expenses the Commission has deducted, annually, a proper depreciation charge. As a matter of fact the utility has been unable to make this deduction because of the imperative necessity of faithfully discharging its interest obligations as far as possible, and we reiterate that every cent of interest bearing indebtedness is reflected in the company's property. The depreciation deduction is properly an item of operating expense. \* \* \*

#### 360—Depreciation

"It is hardly necessary to add that the preservation of a proper depreciation fund is a matter vital to the holders of the company's obligations. The utility's property is pledged to such holders at an agreed value, directly reflected in the value of the obligations. As the property wastes or appreciates so the obligation deteriorates or remains stable. We propose in this proceeding to fix such rates as will enable the utility to meet for the future all of the costs of operation, including the cost of depreciation. The amount to be set aside, annually, to take care of the now existing depreciable property (no amount being set up for the deficiencies of the past) shall be \$4,300. That sum has been determined upon by a careful application of the age and life theory, peculiarly applicable to this hydroelectric plant since the life of its apparatus has been found by a series of averages working under all possible conditions, and is, in a large measure, standardized. Physical depreciation only has been considered. The safety of this fund should not be sacrificed to a possible high rate of interest. We believe it is preferable to require merely that all earnings by the fund shall be added to the reserve (whatever these earnings may be) rather than to require an accounting on a strictly sinking fund basis at a definite rate of interest, irrespective of whether or not the fund actually was able to earn the fixed rate. This method seems to us more equitable to the utility because under the fixed interest rate the unearned portion of the fund would have to be made up from the utility's surplus. Re San Francisco-Oakland Terminal R. P. U. R. 1920A, 131. So much for the subject of depreciation. \* \* \*

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**224.5—Rates Fixed by Contract**

"Some stress is laid upon the fact that this Commission 'should have convincing proof' of the inadequacy of these franchise rates. We agree, and decline to disturb municipal franchise rates, resting on contract, unless it is absolutely necessary. But this very proceeding furnishes the 'convincing proof' of inadequacy that compels disturbance of such rates, and it illustrates the futility of fixing rates by franchise for a long period of time, without a sufficient trial period under actual operating conditions, if, indeed, rates should ever be fixed by franchise. Since the decision in *State ex rel. Billings v. Billings Gas Co.* 173 Pac. 799, P. U. R. 1918F, 768, there has not been, nor can there be, any question of our authority over franchise rates."

**650—Discrimination**

"The record shows that stockholders and employees of the utility are receiving free service at their residences. This practice must be discontinued. It violates Sec. 12, chap. 52, Laws of 1913. Any benefits accruing to the stockholders should be derived from the net income in the form of dividends. If free service to employees is considered part of their compensation, their salaries should be increased and the service furnished should be charged to them.

The Commission concludes:

"Personal investigations made by the Commission show that the plant is modern and renders efficient service. The company has been in existence for a period of three years and a half, and during that time its plant has not been a paying investment under most economical management. With the increase of business secured at Ronan and Pablo, the company will undoubtedly be able to reach a satisfactory status within the next year or so. In the meantime, the consumers should be willing to pay just and reasonable rates to enable the company to meet its obligations, and they should exercise patience and evince consideration during the breaking in period.

"We are not unmindful of the suggestion that the consumers are entitled to 'cheap' rates for the reason that they are situated 'where nature has generously furnished power in abundance.' However, the value of the service to the public is not depreciated by this fact. Despite abundant power, no one else seems willing to undertake the hazard of developing it, and those who have made the risk are entitled, as a minimum, to a fair return upon their investment. (*Smythe v. Ames*, 169 U. S. 466, 18 Sup. Ct. Rep. 418, 42 L. ed. 819.) This minimum they have not received, and cannot receive under existing rates.

"We find that the applicant, Mission Range Power Company, is entitled to an increase in rates to enable it to meet for the future all of the costs of operation and taxes, and, in addition, give its owners

a fair return on the property devoted to the public service. An appropriate order will be entered. The rates promulgated and authorized in the order following are reasonable for the service rendered, when consideration is given to the size and the character of the plant and the limited number of consumers served. At the close of the year 1920, the Commission will make a further investigation with the view of readjusting the rates and giving the consumers the benefit of a lower rate in the event that the increased business justifies a reduction."

## HAWAII

### 400—Rate Theory

Hawaii Railway Company, Ltd., Application for Investigation of Reasonableness of Proposed Increase in Rates. Decision of the Hawaii Public Utilities Commission, Holding that the Proposed Increased Rates are Reasonable. March 15, 1920.

The Hawaii Railway Company filed an application for an investigation by the Hawaii Commission of the reasonableness of a proposed increase in its freight rates.

The proposed new rates of the company constitute practically a 30% raise upon all existing freight rates, the imposition of a lighterage charge of 25c. per ton for all freight lightered from ship to terminal and from terminal to ship and a further schedule of charges for terminal handling of freight not hauled upon the road.

Upon examination of the Company's proposed general freight rates, the Commission says:

"As pointed out heretofore the Company's proposed freight rates, even on the hypothesis that the full tonnage estimated for 1920 will be received, which hypothesis the Company's officers have testified will not occur, will fail to bring in a sufficient return to pay the cost of operation plus depreciation, leaving absolutely nothing whatsoever for dividends.

"This Commission has uniformly held that every public utility is entitled to and should receive a return sufficient to cover not only the costs of efficient operation, including a proper allowance for depreciation, but in addition, to cover a reasonable return on the fair value for the public utility purpose for which it is used of the property devoted to the public use, the only limitation upon this statement being that the rate charged shall not exceed the value of the service rendered.

"The general freight rates proposed by this utility to be placed in effect will not even bring in the cost of operation plus depreciation.

"At first blush it might appear that if the Company is willing to operate without profit that such is the Company's business and nobody else should complain. Such might be true if the only person concerned was the Company but unfortunately great as is the interest



of the Company in this utility, that of the people in the district served by it is greater. The only reason public utilities are given franchises, the only reason the Legislature donated to this utility \$2,500.00 for each mile of road constructed, the only reason the Legislature has conferred upon this and other utilities the right of eminent domain and other special privileges is because the existence, the development, the extension and the prosperity of this utility are necessary to the present and future business, development and growth of the district served by it. \* \* \*

### 300—Investment and Return

“Every public utility owes duties not only to itself and its stockholders, but to the community which it serves, and while it may be a laudable spirit on the part of the stockholders to be willing to forego a return on their investment it is exceedingly bad policy for and disastrous to the community served for any utility to be permitted so to do. Every public utility owes to its patrons and the district served by it the duty of at all times being in such financial condition that it can keep its equipment in safe and proper condition, operate as efficiently and cheaply as general business conditions permit and above all at all times obtain the necessary finances for needed extensions and developments to take care of the present and future growth of the community which it serves. This is particularly true of all transportation utilities and singularly true of this particular utility. This particular utility furnishes absolutely the only outlet for the entire District of North Kohala. That entire district is dependent for all of its transportation, its growth and its future development, upon the transportation facilities of this utility or its terminal and lighterage departments. Any policy or conduct of this utility that will prevent this utility from being in a position to properly take care of this district as safely and economically as possible and in addition be in a position to take care of the development and future growth of the district is a policy not only unjust to the utility itself but is radically unjust and unfair to the district which it serves.

“We do not mean to be understood as holding that this Commission requires that this earned reasonable return must be paid out by the Company in its entirety in the form of dividends. What proportion of this reasonable return the Company should expend in the form of dividends is a matter for the Company to decide—from the Commission’s standpoint the leaving in the business of a part or all of it is exactly analogous to the putting into the business of that much new capital and so far as the Commission is concerned will be treated as such. But that has nothing whatever to do with the requirements by the Commission that the utilities under its jurisdiction so regulate their rates as to earn that reasonable return so long as such requirement does not result either in loss of earnings to the utility on the one hand or a charge of more than the service is worth on the other hand. \* \* \*

**450—Value of Service Theory**

"As pointed out before, this Commission has repeatedly held that any utility is entitled to and should earn the reasonable cost of service which includes proper allowance for depreciation plus a reasonable return upon the property devoted by the utility to the public use for the public utility's purpose for which it is used, subject always to the limitation that this charge shall not be more than the service is actually worth. (See in the Matter of the Application of Mutual Telephone Company for Increase in Rates, Public Utilities Commission, Opinion No. 4.)

"One of the first tests in determining whether the rate proposed is or is not more than the service is actually worth is to compare the proposed rate with the rates charged by others in the same line of business making due allowance for the difference in circumstances, if any. If the rate under consideration is more than is commonly being charged by others substantially similarly situated, then further tests must be applied, if it is lower, then it is unnecessary to go any further. This particular utility is operating under more difficulties than is any other similar utility in the Territory. The topography of the country is more difficult, its equipment is less efficient and up to date, its traffic more limited and in every way the conditions under which it is operated are more difficult than those confronting any other railroad in the Territory. The railroad utility operating in the Territory nearest in point of difficulty of operation to the Hawaii Railway Company, Limited, is the Hawaii Consolidated Railway, Limited, operating on the other side of the same Island.

"A comparison of the rates of these two railroads is therefore pertinent particularly in view of the fact that the Hawaii Consolidated Railway, Limited, has within the last three months been authorized to increase its rates by the Interstate Commerce Commission."

**453—Comparative Rate Data**

A table showing a comparison of the rates for approximately the same distances of the Hawaii Railway Company, Limited, and the Hawaii Consolidated Railway, Limited, discloses that despite the far greater difficulties under which it is operating the proposed new rates of the Hawaii Railway Company, Limited, are uniformly and considerably below those of the Hawaii Consolidated Railway, Limited. The Commission says:

"In other words, instead of the proposed increased rates of the Hawaii Railway Company, Limited, being higher than those of the Hawaii Consolidated Railway, Limited, as they might well justly be in view of the more difficult conditions of operation, they are in fact considerably lower.

"The Company has requested that the Commission examine into its proposed schedule of rates and charges with regard to their reason-

ableness. The Commission finds that the proposed lighterage charge is reasonable and that the proposed freight and terminal charge will be just and reasonable if the proposed freight and terminal charges are amended so as to include the same charges and proportionate charges for the handling of all freight hauled by the railroad as are proposed to be charged for other freight in the schedule of terminal charges submitted. This alteration in the proposed schedule of rates and charges will not only eliminate discrimination between freight for and from the railroad and other freight, but will also bring in the needed revenue to place the utility in a financial position to properly take care of its own needs and those of the district which it serves. The Commission therefore recommends that the proposed schedule of rates and charges be so amended.

"The Commission has no objection to the proposed rates and charges as so amended taking effect as of March 1, 1920."

### **NEW YORK**

#### **500—Rate Practice**

West Winfield v. Charles G. Senif, Doing Business as West Winfield Electric Company, Complaint Against Proposed Increase in Electric Rates. Decision of the New York Public Service Commission (2 D), Dismissing the Complaint. February 3, 1920.

The respondent, Charles G. Senif, doing business under the name of the West Winfield Electric Company, filed with the New York Commission for the Second District, a new tariff increasing the previously existing rates so that the straight line meter rate was raised from 17 cents to 20 cents per kilowatt hour and the minimum charge per month was increased from \$1.25 to \$1.50. The trustees of the village filed a complaint against these rates on the ground that the same were unreasonable.

In 1915, the respondent constructed the electric light plant in question, and entered into contract with the village to furnish electric street lighting, and also to pump the water necessary to furnish a water supply to the inhabitants of the village. The motive power is obtained by the operation of what is known as a "producers' gas set," and the water pumping and electric light propositions are so interwoven that they must be considered together.

Practically the entire work of maintaining the plant in question, thereby furnishing both the electric light and water to the village, is performed by the respondent individually.

The Commission says:

#### **310—Valuation**

"On account of the smallness of the municipality affected, and the consequent practical inability to employ experts to make a valuation

of the property involved, Mr. C. A. Volz, assistant chief of the division of light, heat and power of this Commission, inspected the property in question, and made a valuation thereof. This valuation was subsequently announced to be satisfactory to the village, and is not materially different from the valuation made by an expert of the respondent, Mr. Sweet, which is also in evidence.

"As a result of this investigation, Mr. Volz fixed the value of the property of this respondent, including the fixed capital, working capital, materials and supplies at \$15,794.09. This does not include a so-called 'going value'."

### 315.1—Going Value

"It is claimed by the respondent that to this aggregate investment, which represents the present value of the physical property, should be added the so-called 'going value.' This argument is based upon the decision of the court of appeals in the case of *People ex rel. Kings County Lighting Co. v. Willcox*, 210 N. Y. 479.

"It is urged that the deficiency for each of the four years of operation of this plant, in fair return upon the valuation of \$15,000, should be added to the tangible capital.

"Such deficiency should not always be added for rate-making purposes, but where a company is actually established and is earning a fair return, the deficiency occurring in the years in which the business was being built up, may perhaps properly be considered as part of the investment. Certainly such annual deficiency cannot be considered in cases such as the one now under consideration, where a company never is able to yield a fair return. If this were so, a company which never earned a fair return would be constantly increasing in value for rate-making purposes, and the greater the deficiency, and the less the success of the company, the greater would become its estimated value to be considered in fixing a rate. This, of course, was not the intention of the court in the decision referred to. \* \* \*

"The plant of the respondent is located upon village property, and was so located pursuant to contracts for furnishing electric light and pumping water, which will expire during the current year. If these contracts are not renewed, so much of the property as is located upon such village land, including the power plant, will have to be removed, and will then be only actually worth its salvage value.

"It is urged because this event may happen, the property should not be valued at its full value in place, but only at its salvage value. However much force there may be in that theory, it has not been taken into consideration for the reason that it would ultimately work in favor of the respondent, and suggest the propriety of a still higher rate than that now under consideration, for the reason that if, at the expiration of a certain time, this plant would have to be removed

from its present location, and would thereby lose much of its value, respondent would now be entitled, and has been entitled during the years of his temporary occupancy, to collect in rates a sufficient sum to make good the permanent loss of value of his power plant by reason of its contemplated removal, at the expiration of his term of occupancy, in addition to a reasonable return upon the investment.

"This contention, therefore, works against the village rather than in its favor. As it is apparent from the figures, hereinbefore submitted, that the rates set forth in the tariff, as filed, will yield only 6.7 per cent on the actual capital invested, less decreased consumption from increased prices, any further considerations which tend to fortify the position of the respondent are entirely unnecessary.

"It is quite true that the rate, sought to be charged, is a high rate, but it must be borne in mind that this is a small community and the demand is small, there being only 133 commercial customers of the plant, the entire consumption of electricity for the last calendar year reported being 16,678 kilowatt hours by such commercial users in addition to 2,173 hours of consumption by the 42 municipal street lights.

#### **453—Comparative Rate Data**

"Various other communities of the state, by reason of similar disadvantageous situation are required to pay an equal or higher rate. \* \* \*

"Inasmuch as the cost of supplies and materials entering into the production of electricity, under conditions prevailing at present, are unusually high, the period to be fixed in the order, during which the rates of the schedule now filed shall be effective, ought not to exceed a period of one year, or until February 1, 1921.

"An order, should, therefore, be entered holding that the rates set forth in the proposed tariff are not unreasonable, and permitting the collection of the rate prescribed therein for the period specified, and until the further order of the Commission."

## **REFERENCES**

### **GENERAL**

#### **783—Service**

Service by S. M. Kennedy, Paper to Be Presented at the Forty-third Convention of the National Electric Light Association to Be Held at Pasadena, California, May 18-22, 1920. Pamphlet 10 pages.

In order to fully analyze the subject of service, the writer points out two angles from which service must be considered: first, "On What Good Service Depends," and, second, "What Depends on Good Service." In under the heading

"On What Good Service Depends," the writer discusses rate schedules. He says:

"It is the business of the good central station company to cater to the public and anticipate its wishes. Now, if there is one thing a consumer likes to know more than another, it is what his service is costing him and how his bill is figured. For this reason rate schedules of the simplest form are the most desirable. From an engineering standpoint, the so-called scientific schedules, where the rate curve is supposed to follow the cost of service, are interesting, educational and valuable—and such schedules may be used to advantage in handling the larger blocks of lighting, heating and power business. But, for the ordinary man, the smaller consumer, complicated schedules are mystifying and confusing and tend to create the impression that they are framed to conceal the cost rather than to reveal it."

## COURT DECISION REFERENCES

### 112.5—Ordinance Rates.

*Selkirk v. Sioux City Gas and Electric Co.* Decision of the Supreme Court of Iowa. February 16, 1920. 176 Northwestern 301.

The plaintiff, on behalf of himself and other gas consumers, brought action to enjoin defendant from putting into effect and collecting increased rates for gas under an amended or new ordinance, contrary to the rates fixed in the ordinance granting the franchise in 1902, which franchise ordinance the defendant contends was repealed as to rates by the new or amended ordinance.

There was a demurrer to the petition, which was sustained, and plaintiff, electing to stand thereon, the petition was dismissed, and judgment rendered against plaintiff. Plaintiff appeals to this Court. The Court says:

"In the Muscatine Case the light company endeavored to change the rate fixed in the ordinance and charge a higher one, without the exercise by the City of its power to regulate and fix rates, and without the consent of the City. We think the instant case is ruled by *Iowa Railway & Light Co. v. Jones*, 182 Iowa, 982-989, 164 N. W. 780; *Town of Williams v. Iowa Falls Electric Co.*, 170 N. W. 815; *Ottumwa Railway & Light Co. v. City of Ottumwa*, 173 N. W. 270, Appellee also cites *Knoxville v. Water Co.*, 212 U. S. 1, 29 Sup. Ct. 148, 53 L. Ed. 371; *Freeport Water Co. v. Freeport*, 180 U. S. 587, 21 Sup. Ct. 493, 45 L. Ed. 679; *Wyandotte County Gas Co. v. Kansas*, 231 U. S. 622, 34 Sup. Ct. 226, 58 L. Ed. 404; *State ex rel. Rhodes v. Pub. Serv. Com.*, 270 Mo. 547, 194 S. W. 287; *State ex rel. Mo. Southern R. Co. v. Pub. Serv. Com.*, 259 Mo. 704, 168 S. W. 1157; *Sandpoint W. & L. Co. v. Sandpoint*, 31 Idaho 498, 173 Pac. 972, L. R. A. 1918F, 1106; *Salt Lake v. Utah Light & Traction Co.*, (Utah) 173, Pac. 556, 3 A. L. R. 715; *State ex rel. City of Sedalia v. Commission*, 275 Mo. 201, 204 S. W. 497; *Denver & S. P. R. Co. v. Englewood*, 62 Colo. 229, 161 Pac. 151, 4 A. L. R. 956.

"All questions presented in this case are passed upon and decided adversely to appellant's contention in the *Jones Case*, *supra*. It is true that the charges in that case had to do with heat rather than gas, but the same power is given cities to regulate and fix the rate for gas as for heat. They both appear in the same section. It is true there is this difference between that case and this: In that case, the ordinance provided that the council might change the rate, but the Court said that this adds nothing to the statute. In the *Ottumwa Case* the holding was, in brief, that the power given by the statute, with reference to regulation and fixing rates, applied to charges for gas, water, light or power, and did not include street railway companies.

"Code, Sec. 720, has to do with the power to grant certain rights or franchises for a term of years, subject to a vote of the electors. There is no provision in that section for regulating or fixing rates. Section 725 is the statute containing the continuing governmental power of rate making, with limitations on the abridgment thereof by ordinance or contract.

"Without further discussion, we reach the conclusion that the ruling of the trial court was right, and the judgment is therefore affirmed."

#### 224.2—Contracts.

*City of Hillsboro v. Public Service Commission of Oregon, et al.* Decision of the Supreme Court of Oregon. February 17, 1920. 187 Pacific 617.

This is a suit by the City of Hillsboro to set aside an order of the Public Service Commission, and to enjoin the North Coast Power Company from collecting rentals for fire hydrants in the City of Hillsboro.

The Supreme Court, in affirming the judgment of the Circuit Court, says:

"We note a long line of decisions by the Public Service Commissions of the several states, all of which treat the municipality as being no less a customer than any of the inhabitants of the City.

"The Maine Commission, in *Re Wiscasset Water Co.*, P. U. R. 1916D, 927. \* \* \*

"In *Ben Avon Borough v. Ohio Valley Water Co.*, P. U. R. 1917C, 390, 417, the Pennsylvania Commission says:

"There is no service rendered by the respondent that does not require on its part some expense. To be more specific, the respondent is at some expense for all the water supplied by it, and as all the cost and expense, including maintenance, depreciation, and operation, together with a fair return on its property, must be paid, it becomes apparent that if some receive free service then the cost of such free service is a loss to the Company unless it falls upon those who do pay.' \* \* \*

"To substantially the same effect are the following: *Town of Hollister v. Hollister Water Co.* (California) P. U. R. 1915D, 626; *City of Sandpoint v. Sandpoint Water & L. Co.* (Idaho) P. U. R. 1915F, 445, 460; *City of Lincoln v. Lincoln Water & L. Co.* (Illinois) P. U. R. 1917B, 176; *Re Atlantic County Electric Co.* (New Jersey) P. U. R. 1918B, 589; *Smith v. City Water Co. of Merrill* (Wisconsin) P. U. R. 1916B, 1068; *Re Warwood Water & Light Co.* (W. Virginia) P. U. R. 1917C, 329; *Re Fire Dept. of South Bend* (Indiana) P. U. R. 1915A, 538.

"We have cited these cases solely for the light they may throw upon the question as to whether or not the franchise contract involved in the instant case is a rate-making contract in which the general public has an interest. In our judgment they are sound in their reasoning and logical in their deduction. We conclude, therefore, that the franchise ordinance in the case at bar does involve the subject of rate-making and is not exclusively a proprietary matter.

"In *Woodburn v. Public Service Commission*, *supra*, we have conclusively determined that whenever a city enters into a franchise agreement with a public utility involving rates for service, the law reads into such a contract a stipulation by the city that the state may at any time exercise its police power and charge such rates.

"It follows that the judgment must be affirmed, and it is so ordered."

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May 20, 1920

No. 8

# RATE RESEARCH



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# Rate Research

Vol. 17

New York, N. Y., May 20, 1920

No. 8

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### WISCONSIN

#### 300—Investment and Return.

Wisconsin-Minnesota Light and Power Company, Application for a Revision of the Gas Rates Effective in the City of Chippewa Falls. Decision of the Wisconsin Railroad Commission, Granting an Increase in Rates. May 1, 1920.

The Wisconsin-Minnesota Light and Power Company, in its application, asks the Commission to conduct an investigation to determine what rates are fair and reasonable.

In the case here under consideration the Company has not asked that any schedule particularly set forth be authorized but has left to the Commission the whole matter of the level and proportions of the schedule, with the exception that in the memorandum submitted as a brief it was suggested that the rate schedule should be such as to afford the Company an average revenue of \$2.50 per thousand cubic feet of gas sold.

The Commission says:

#### 400—Rate Theory.

"Before the reasonableness or unreasonableness of a rate schedule can be determined it is important to know what costs that schedule should be designed to cover. The aggregate of such costs make up the operating expenses of the utility—the term 'operating expenses,' in this sense, meaning all expenses which must be met in order that the successful conduct of the business may continue. The expenses to be met include not only the cost of labor, materials, rents, taxes, etc., currently used in carrying on the affairs, but they include the provision for deteriorations of property devoted to the public service and the return to investors representing the payment for the use of capital."

#### 410—Cost of Service.

"Before proceeding to a consideration of the testimony dealing with the value of the property it may be well to call attention to the rela-

tion between the valuation and the total of the costs of furnishing service. Successful conduct of any business over a period of years implies that the cost of conducting the business must have been completely covered. The business of furnishing gas is no exception. A great deal of confusion has resulted, however, from failure to understand the nature and measure the extent of some of the elements of cost. Costs which are incurred in order that the obvious functions of the business may be carried on from day to day and for which labor and materials or other elements enter directly into the operations of the business are quite generally understood and recognized. Similarly, the interest which must be paid on borrowed money is definitely measurable and not an element of cost which causes much confusion. On the other hand, such costs as that of protecting the utility against depletion of its assets due to wear and tear or to causes such as inadequacy or obsolescence, or such costs as that of securing the capital to carry on the business are very often misunderstood. In this case, it becomes necessary to measure these costs as accurately as possible in order to fix the total cost of service which must be considered in establishing rates."

### 360—Depreciation.

"Adequate provision for depreciation and adequate compensation for capital reasonably employed constitute part of the cost of service. To make the allowance for these elements either inadequate or excessive would be as unfair as to allow either less or more than the cost of the labor necessarily employed in carrying on the business.

"In order to make this clear we will first consider the basis upon which the provisions for depreciation should be made. \* \* \*

In its memorandum brief the Company has used unit prices as of May 1, 1919, as a basis for the valuation upon which it computes its depreciation requirement and finds that on that basis an annual amount of \$3,941.42 would be necessary to make the proper provision for depreciation at the rate of 2% of the property value. The consulting engineer for the City has estimated the requirement at \$1,800 per year, apparently using 2% of his calculated cost new of \$90,000.

"Assuming for the moment that the life of the property is such that with proper interest credits to the reserve 2% of the total amount to be reserved would represent an adequate annual charge to operating expenses, there remains the important question of what should be the measure of the total amount to be reserved. This depends, of course, upon what the purpose of the depreciation reserve is. If the purpose of reserving a part of the earnings from year to year to cover depreciation is to build up a sufficient fund to renew the property at prices prevailing at the renewal date, the entire cost of the replacement would be chargeable to the reserve and therefore no part of the cost would be chargeable to the property account. This would mean that if the plant and property account

properly represented the original cost of the property, the property figure on the books as units of property were replaced would continue to be the cost of the original units and the book value would not, after renewals had taken place, show the real cost of the property. On the other hand, if the original cost of the units replaced is charged to the reserve and credited to the property account, and if the entire cost of the new unit is charged to the property account, the book value will continue to represent the cost of the property, both for original units of property and for units which have replaced others.

"The purpose of providing a reserve for depreciation in a public utility business is not necessarily to provide sufficient funds for replacing the property as it ceases to be useful, but rather the purpose is to hold in the business, out of earnings obtained during the usefulness of a certain property, a sufficient amount to protect the utility from loss when it becomes necessary to abandon the property. The depreciation reserve is not for the purpose of providing any additional capital which may be required to replace the original property with better or more expensive property. To use the depreciation reserve for such a purpose would mean that in the end the plant account would bear very little relation to the actual historical cost of the property in existence at any time. On the other hand, the use of the reserve for its proper purpose, as outlined here, means that a close relationship will be kept between the actual cost of the property and the investment as shown in the property and plant account—assuming that proper accounting procedure has been followed in other respects.

"In the public service business the public is, of course, interested in the continuance of the business, and this interest has, in some cases, been interpreted as supporting the theory that during the life of any property those to whose use that property was devoted should provide the means for its replacement without regard to the relation between the cost of such replacement and the loss actually sustained on the original property. This would mean that consumers who may have used the service during times when construction costs were relatively low would have been required to pay the utility for the loss on property worn out in their service, with enough in addition to enable it to replace the property at an advanced price for the service of future customers. Naturally, if the depreciation reserve is to be built up to replace property at advanced prices, the full cost of the replacement should be charged to the reserve; no addition to property and plant accounts should be made; no added burden will have been assumed by the utility, and a rate schedule designed to yield a return upon property at the prices at which the replacements were made would, of course, be wholly inequitable.

"A renewal of property involves two operations: (1) the removal or abandonment of worn out, obsolete, or inadequate property; and

(2) the installation or construction of the new. The depreciation reserve has a relation to the first of these operations only. Omitting consideration of the cost of removal and of the salvage value, which bear upon details of accounting procedure and not upon the principles underlying the accounting for renewals and replacements, the accounting procedure is very simple. As property is retired from service its original cost should be credited to the appropriate plant account and charged to the depreciation reserve. This done, the old property is cleared off the books and that which takes its place is to be accounted for in the same manner as if it were an extension of the plant, where no plant had existed theretofore. From the standpoint of correct accounting therefore, there is no such operation as a renewal of property. Instead, there is a retirement of property discarded and then, as a separate transaction, the construction or installation of new property.

"Part of the confusion regarding the accounting for depreciation and the purposes to be served by a reserve for depreciation, is doubtless due to the inadequacy of the procedure prescribed in classifications of accounts established by public authorities, including this Commission, and to the failure of such classifications to conform to the nature of the transactions involved.

"The question of depreciation reserves was discussed at length in the cases of the T. M. E. R. & L. Co. et al, vs. City of Milwaukee, 21 W. R. C. R., pp. 28-31 inclusive. We call attention at this time to the fact that the Commission there showed its reasons for its conclusions on the question of depreciation, and that it was then the opinion of this Commission that it should, as has, in fact, been the practice of the Commission at all times, establish depreciation reserves upon the original cost basis, or upon a basis as near thereto as could be ascertained. It was there said:

"'Current maintenance is likely to fluctuate considerably from year to year, as is also the amount necessary for renewals. Current maintenance, however, will vary with the variation in material and labor costs. Depreciation reserve, however, should be set aside not on the basis of such variation, but with relation to the original cost or investment, any excess cost in renewals and replacements over and above original cost finally to go to capital account.' Ibid, p. 31.

"This was exactly the practice followed by this Commission in the case of City of Milwaukee, plaintiff, vs. Railroad Commission of Wisconsin and T. M. E. R. & L. Co., defendants, pending in the Circuit Court of Dane County, and decided by this Commission on January 30, 1920. (Not yet reported.)"

#### 314—Overheads.

"The question of overhead allowances has been studied very carefully by the Commission and its engineering staff in a large number

of cases, and the general allowance of 15% has resulted from these studies. The record in this case does not afford sufficient reason for increasing this allowance. The amount to be allowed for overhead costs of construction is, of course, somewhat controlled by the nature of the valuation. A valuation designed to show the original cost of the property under the conditions actually prevailing in its construction would quite likely require a smaller allowance for overhead costs than a valuation representing the estimated cost of replacing the entire property within a limited time. The testimony in this case shows that the valuation submitted by our engineering staff represents, in general, an attempt to determine the actual cost of the property, as and when built. To a considerable extent the same is true of Gifford's valuation. Baehr's valuations, on the other hand, apparently represent estimates of the cost of replacing the property in its entirety, and not in the manner in which it was developed.

"The only serious question regarding the overhead allowances as included in the valuation made by our engineering staff seems to us to be whether they are not too high to be consistent with the attempt made to approximate the actual cost of the property. A memorandum has been submitted on this matter by the engineering department from which we summarize the following:

"The allowance of 15% in connection with the valuation designed to represent the actual investment may be high, because in the actual construction of the property over a period of years, much of the property having been constructed after the plant was put in operation, there was a large proportion of the inventory on which little or no general overhead expense was incurred, except as it was included either in the direct costs as charged to the construction jobs for specific items or in the operating expenses of the utility. There is very little in the way of engineering and supervision involved in the purchase and installation of gas meters, and frequently no interest during construction. These meters, as added to the system from time to time, are purchased by the operating management as needed and almost immediately put into service—some of them probably even before the bill for them is paid. The situation is much the same as to service connections. These are installed as called for by new customers, and are in service within a few days from the date of issuance of the order for the work. In many cases they are probably in service before the wages of the men who put them in are paid. No interest during construction is involved, and very little in the way of engineering. Even the extensions of gas mains are in much the same class.

"The fact that this Company has made a practice of charging each work order with a percentage for Kelsey Brewer & Company does not seem to us to have any bearing on the situation. The existence of such a charge does not establish its reasonableness, and the

amount of the charge, it seems to us, has no bearing on the question of the proper allowance for overhead cost. As representative of fair overhead cost actually incurred in the construction of the property under the conditions prevailing during its construction, 10% of the direct cost may be more nearly correct than 15%.

"However, the original cost of the property is not the only evidence of value, and while the overhead allowance fixed by our engineering staff may not be entirely consistent with the basis upon which the staff's valuation was made, it would probably not constitute an unreasonable allowance in an estimate of the cost of reproduction of the property as a whole and we believe should be given consideration as its stands."

### 313—Unit Prices.

"Within a rather small percentage of difference also, it seems that this valuation represents the cost of reproduction of the property at prices prevailing prior to the war period. \* \* \*

"We believe that no extended discussion is required here with reference to the Company's claim that the cost of replacing the property at current prices, or at prices for a limited period prior to May 1, 1919, should be given controlling weight in fixing the valuation. The question of valuation has been fully discussed in other cases and no useful purpose would be served by repeating the discussion here. Some of the elements which are entitled to consideration in the determination of the value of a property are not determinable in this case. The actual investment is evidenced only by the valuation which was designed to approximate the investment in the property. The securities outstanding are securities against this and other properties operated by the Wisconsin-Minnesota Light and Power Company, and there is no way of determining just what securities should be considered as outstanding against the Chippewa Falls gas property.

"In this connection we refer to our discussion of the subject of value in the case of T. M. E. R. & L. Co. et al, vs. City of Milwaukee, 21 W. R. C. R., p. 19, et seq., and in the case of City of Milwaukee, plaintiff, vs. Railroad Commission of Wisconsin et al, defendants, already referred to. (Not yet reported.) In this connection also we desire to make special reference to the case of State Public Utilities Commission vs. Springfield Gas & Electric Company, 125 N. E. Reporter, p. 891, recently decided by the Supreme Court of Illinois. After discussing the principles of valuation at some length, the Court said:

"It would be equally as unfair to the consumer to fix the rate at a figure which would produce a reasonable income on a value determined by the cost of reproduction new at a time when cost of construction was abnormally inflated, as it would be unfair to the



public utility to compel it to serve the public for a rate that would produce a reasonable income on a value determined by cost of reproduction new at a time when the cost of construction was abnormally low. Therefore it cannot be laid down as a rule without qualifications that cost of reproduction new, less depreciation, is the only basis of valuation for rate making purposes. It is equally true that the original cost of construction, less depreciation, cannot be held to be the only proper basis for determination of valuation for rate making purposes. As we have pointed out heretofore in this opinion, the weight of authority is that every element having any bearing on the situation must be considered in the investigation, and then sound business judgment applied to the determination of a valuation that is fair and just to the consumer and the utility. Each case must be considered on its own merits, and such result of value arrived at as may be just and right in each case."

*(To be continued)*

## DISTRICT OF COLUMBIA

### 630—Cost of Supplies.

Washington Railway and Electric Company, and Its Subsidiary Companies, Application for Authority to Increase Its Rate of Fare. Decision of the District of Columbia Public Utilities Commission, Granting an Increase. April 15, 1920.

On January 6, 1920, the Washington Railway and Electric Company, on its own behalf and on behalf of its subsidiaries, the City and Suburban Railway of Washington, the Georgetown and Tennallytown Railway Company, and the Washington-Interurban Railroad Company, renewed its application of July 9, 1919 (Formal Case No. 77), for an increase in the rate of fare, praying that the evidence taken thereon be treated as a part of this case. The application now before the Commission is, in effect, a petition for a modification of its orders numbers 344 and 345, fixing the rate of fare on the several street railway lines within the District of Columbia at seven cents cash, or four tickets for twenty-five cents, for a six months' period to end on April 30, 1920. As those orders apply not only to the petitioners, but to The Capital Traction Company, the East Washington Heights Traction Railroad Company, the Washington-Virginia Railway Company, and the Washington and Maryland Railway Company as well, these last-named companies were made parties to the proceeding by the issuance of order number 365.

At the time of the receipt of the pending application of the Washington Railway and Electric Company, the Commission had in preparation a bill to be presented to Congress providing for certain much-needed adjustments in the local street railway situation. The primary objects of the proposed legislation were to change the form of taxa-

tion of street railway companies from one based on gross receipts to one based on operating income, and to relieve the street railway companies of the burden now imposed upon them of paying the entire cost of maintaining street railway crossing policemen.

The Commission says :

**629—Competition.**

"The street railways of the District of Columbia are grouped into two principal systems, which are highly competitive in the thickly populated portions of the city, but which are quite dissimilar as a whole in that one operates and maintains twice the mileage of the other system, having ten suburban feeders running to the District boundaries, while the other has only two such suburban feeders. The gross receipts of the two systems are practically identical, but the costs of operation are very much larger in the case of the system with the large suburban mileage. Under existing law the taxes (other than the tax on real estate) paid by the two systems are equal. By the proposed legislation, outlined above, the tax burden will be shifted and the disparity in net earning power greatly reduced. Three months have elapsed since this legislation was introduced and the six months' period during which the present rates of fare were to apply has almost expired. In the meantime, operating costs have materially increased, thus aggravating the perplexing features of the street railway fare problem caused by the disparity in the earning power of the two companies."

The Washington Railway and Electric Company presented figures showing that it is earning annually \$434,000 less than a 6% return on the fair value of the property of the four component companies of its system within the District of Columbia, as found by this Commission.

The Washington Railway and Electric Company, at the request of the Commission, presented information of the application of a zone system to its lines. The Commission says :

"Decided opposition was manifested by individual citizens and by representatives of various civic bodies to the adoption of any form of measured service, and while the Commission believes that it is right and just in principle that the users of a public service should pay for that service as far as possible in proportion to the cost of furnishing it to them, it is of the opinion that under present conditions it is inadvisable to adopt a zone system of street car fares or any other form of measured street railway service."

The Commission finds :

"The Commission is of the opinion that only a part of the relief asked for should be secured by an increase in rates of fare, and that in fixing a rate the Commission should assume that Congress will also grant relief through a modified form of taxation.

"A ticket fare of seven and one-half cents, with a cash fare of eight cents, will yield an additional annual revenue of approximately \$625,000. If to this is added the relief which would follow the enactment of the proposed legislation, the amount of the Company's revenues would be sufficient to yield a 6% return on the fair value of its property as ascertained by this Commission.

"To give this relief to the Washington Railway and Electric Company and its subsidiaries without at the same time establishing the same increased rates on the lines of its competitor, The Capital Traction Company, would mean that so much traffic would be deflected from the Washington Railway and Electric System to The Capital Traction Company that the revenues of the former would be decreased probably to a point below actual operating expenses, thus defeating the purpose of the grant of relief, and at the same time destroying the service standard of The Capital Traction Company by an overwhelming traffic load which it could not possibly accommodate. In other words, it is necessary in the public interest to maintain a uniform rate of street railway fare to prevent a disarrangement of street railway service disastrous to the companies and to the public alike.

"The Commission is faced, therefore, with the necessity of granting an increase to both systems, but it believes that the Congress should readjust the method of taxation so that the Washington Railway and Electric Company will be relieved of a portion of its present tax burden. The revenues of the District, thus diminished, would be recouped by increasing the tax on the other system, and this increased tax would, in turn, offset the fare increase granted to that company solely to protect the public from the evil consequences of different rates of fare for the several companies.

"The proposed increased fare will, under existing law, unduly increase the revenues of The Capital Traction Company, but if the street railway lines of the District of Columbia be considered as a whole, the new rate will yield a return only slightly in excess of 7% on the combined fair value of all the street railway property used and useful for street railway purposes in the District of Columbia as heretofore determined by this Commission."

## **PENNSYLVANIA**

### **132—Protection from Competition.**

Glen Mills Electric Company, Application for Authority to Supply Electric Service to the Public of Thornbury, Pennsylvania. Decision of the Pennsylvania Public Service Commission, Denying the Application. February 3, 1920.

The Thornbury Township Electric Company was incorporated in February, 1915, and obtained a certificate of public convenience to

render electric service in Thornbury Township, Delaware County. This corporation and its rights were, in due form of law by merger, with the approval of the Commission, incorporated into the Delaware County Electric Company in August, 1916.

With the exception of stringing a few short spans of wire, entirely disconnected from any electric circuits, the Delaware County Electric Company apparently made no serious attempt to exercise its acquired rights or to render to the public the service which, under the charter of its constituent company, the Thornbury Township Electric Company, it was obligated to perform, until about the period the Glen Mills Electric Company presented the pending application for approval of its charter.

The Commission says:

"The testimony discloses that not until notice that a competing company was prepared to enter the field did the protestant company take on activity to comply with its public obligations. Such a situation, under anything like normal or usual circumstances, should not and could not be tolerated. It would be the plain duty of this Commission to grant public relief, either by giving another company the right to enter into the territory competitively, or by compelling the recreant company, by appropriate order, to extend its service.

"Certificates of public convenience are not granted by this Commission in order that legal rights may be acquired by corporate interests and then held for the purpose of exploitation or development at a later period. Certificates are granted only if and when public convenience or necessity is shown to demand their issuance. When issued it follows, as a matter of good faith and legal obligation, that immediate efforts should be put forth to care for the public requirements. If such obligations are not fulfilled, it follows that the Commission may, in a proper case, permit the territory to be served by a competing company.

"In this case, the Delaware County Electric Company, apart from general disavowal of neglect in the exercise of its rights, sets up the claim that it was prevented by war conditions and the demands upon its equipment for war work, from extending its service into Thornbury Township. There is sufficient in the testimony to lead the Commission, if not to absolve the protestant entirely, at least to give it the benefit of the doubt and to afford it a further opportunity to exercise its rights, now that war priority demands no longer prevail. In so concluding, we are placing emphasis upon the fact that the non-competitive rule is one that ought not to be lightly set aside, because it is a rule of regulatory policy inuring to the benefit of the public and the utility. Competition in public service, with its attendant evils of duplication of plant investment, the burden of which ultimately falls upon the rate payers, is, of course, to be avoided.

"In the circumstances, the Commission is unable to find, upon a consideration of all the evidence, that the approval of the pending application is necessary or proper for the service, accommodation, convenience or safety of the public, and it is therefore refused."

## IDAHO

### 300—Investment and Return.

Moscow Telephone and Telegraph Company, Limited, Application for Authority to Increase Its Rates. Decision of the Idaho Public Utilities Commission, Granting an Increase. April 5, 1920.

The Moscow Telephone and Telegraph Company filed its application for an increase in rates, alleging that the operating revenues under existing schedules are wholly inadequate to meet its operating expenses, provide for depreciation, and pay a reasonable return on the fair value of its system.

### 313—Unit Prices.

No records were available from which the Commission could secure the historical or book cost of the system, but the Commission's engineers, from knowledge obtained by personal inspection of the system and applying unit costs as of the time of construction of its various parts, have developed the historical cost of the system.

The Commission says:

"Commissions and courts heretofore, in considering the question of a proper rate base, have usually given principal weight to cost of reproduction new, less depreciation, and have used the average of prices covering a period of from three to five years in their calculations. This method we believe to be fair and just if the period of years selected represents fairly normal conditions and is within the time during which the plant or system under investigation was constructed. The inclusion of a year or period of unusual depression in prices would not be just to the utility; neither would the inclusion of a year of abnormally high prices be just to the patrons, especially if the abnormal period were not within the time during which the plant or the principal part thereof was constructed. We believe that a rate base reached by applying present day prices or prices for a number of years, including this high level period, would not be just and equitable in the case now under consideration, especially in the light of the testimony showing that practically no additions or betterments have been made in applicant's system during the three or four years last past. Actual investment in additions and betterments should be added to capital account at prices prevailing at the time of such investment, and increased costs of operation can be taken care of in the allowance for operating expenses.

"Since the historical cost of applicant's system was obtained by the application of prices prevailing during the period of actual construction of the principal part of its system, the Commission will give principal weight in the instant case to this cost.

"Purchase price is entitled to some weight, but the Commission cannot fathom the mind of the purchaser to discover what conditions or considerations may have influenced his judgment in making the purchase. There is some testimony that applicant herein may have attributed some value to business subsidiary to, but not necessarily a part of, the telephone system he purchased."

## REFERENCES

### PUBLIC SERVICE REGULATION

#### 221—Capitalization.

Public Utility Financing, by Edwin O. Edgerton, *Electrical World*, May 8, 1920. p. 1069, 3 pages.

Mr. Edwin O. Edgerton, President of the California Railroad Commission, points out that the biggest single problem before the public utilities today is financing; that is to say, obtaining money at reasonable rates sufficient adequately to meet the constantly growing demands of the public for service. Particularly as to the electric power companies, the demands for money for development have become so great that, looked at from the standpoint of the consumer, if there are any unnecessary obstacles in the way of financing they should be swept away and every effort should be made to encourage investment in public utilities.

He says:

"For reasons which appear perfectly logical, the history of regulation shows a marked disinclination on the part of regulating authorities to recognize stocks or bonds as a basis for determining revenue or rate fixing. Before the advent of the state public utility commissions, which have control of the issuance of stocks and bonds, city councils and local authorities fixed rates but had no control of bonds or stocks. On the advent of the state regulating authorities it was found impossible at once to make over or revamp the outstanding capitalization of the utilities and, being unwilling to assume any responsibility for the sometimes unduly large outstanding issues of securities, the regulating bodies immediately took a position of standing on physical valuation as a rate base and insisted at all times—and in a large measure they today insist—that the proper basis for considering the contribution the public must make for service is physical value of plant. \* \* \*

"My first suggestion is that utility commissions establish and recognize a sound issue of securities and thereafter fix rates based on the bond interest and dividend requirements of these securities. Consumers would clearly understand that rates must be such as will enable the company to pay dividends and bond interest regularly; the utility management would have at hand a ready means of measuring its revenue needs, and the investor would have every reasonable assurance that when he purchased securities the regulating authority would, in so far as the business made it practicable, authorize rates which would maintain his investment intact and produce a regular return.

"This, it seems to me, would make rate fixing, as far as the total of revenue to be produced is concerned, almost automatic, and instead of the long-

drawn-out controversies which now occur in rate proceedings, wherein all the intricate and complicated questions of depreciation, various methods of valuation, and so forth, are discussed over and over again, we should have a comparatively simple problem. The total amount of revenue necessary to meet operating expenses, depreciation, bond interest and dividend requirements could readily be ascertained and rates adjusted accordingly.

"It is my observation that it is very much in the public interest that money be obtained by our great public utilities at the lowest possible rates, and it follows, for the reasons already given, that the public is positively benefited the greater the assurance to the investor of security and return."

### **252—Commission Annual Reports.**

Nebraska State Railway Commission Eleventh Annual Report. Year Ending December 31, 1918. 762 pages.

The work of the Commission for the twelve months ending December 31, 1918, is reviewed and the decisions of the Commission rendered during the year are given in the report.

### **253—Commission Reports of Decisions.**

Rhode Island Public Utilities Commission, Seventh Annual Report, 1918. 264 pages.

The opinions and orders of the Commission in formal and informal cases and statistics for the utilities under the jurisdiction of the Commission are given for the year 1918.

## **COURT DECISION REFERENCES**

### **129.4—Refunds.**

Oklahoma Natural Gas Co. v. State, et al. Decision of the Supreme Court of Oklahoma. January 20, 1920. Rehearing Denied March 30, 1920. 188 Pacific 338.

The plaintiff appeals from an order of the Corporation Commission directing the refund to domestic consumers in certain districts in Oklahoma City of from 8 to 25 per cent of the bills rendered December, 1917, and January, 1918, on account of failure to furnish adequate gas service.

It is not controverted that there was inadequate service during these times, but appellant denies the right of the Corporation Commission to require the discounting of bills below the usual amount allowed for prompt payment; the contention being that natural gas is a commodity for which the utilities are entitled to payment on a quantum basis, as shown by meter readings, and the adequacy or inadequacy of service does not enter into the payment of bills.

In affirming the order of the Commission, the Court says:

"The only difference pointed out by appellant between this case and that of *Nowata County Gas Co. v. State et al*, 177 Pac. 618, where an order of the Corporation Commission, requiring similar discounts for failure to give adequate gas service, was upheld by this Court, is that in the *Nowata* case the findings of fact of the Corporation Commission, on all matters material

to the issues, were admitted by the gas company. It therefore remains to be determined only whether there are disputed material findings of fact herein which should be determined adversely to those made by the Corporation Commission. \* \* \*

"The Commission in the order before us used exactly the same basis in making discounts as it did in the Nowata case, and inasmuch as the Court's decision in that case disposes of other material issues herein, it only becomes necessary to consider whether the Commission's findings in this respect should be sustained, and the same, being *prima facie* just, reasonable and correct, can be overcome or rebutted only by the facts in the record as weighed and found by this Court in reviewing the same, with the burden upon the appellant of making it clearly appear that the order made by the Commission is erroneous. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okl. 210, 100 Pac. 11, 21 L. R. A. (N. S.) 908. After reviewing the evidence in the record, we find no reason for rejecting the basis applied by the Commission in determining adequacy of service or for disturbing the Commission's findings as to what pressure constitutes either adequate or partial service.

"Appellant insists that the order of the Commission is beyond its jurisdiction, and deprives the utilities of their property without due process of law. \* \* \*

"The order of the Commission cannot be said to be a taking of property without due process of law. Hearing was had before a legally constituted tribunal and all the proceedings leading up to and including the hearing were regular, and denied appellant none of the right constituting due process of law, and appeal has been taken to a court authorized by law to review the proceedings and findings of the Commission. There is no evidence in the record to indicate that the discounts required reduce the revenues of the appellant to a point where it failed to receive an adequate return on the investment legally employed in the business of furnishing natural gas service, and if such should result from a continuance of the Commission's policy, the utilities are not precluded from making application to the Commission for higher rates.

"Since the order of the Commission is merely an order adjusting rates in accordance with the schedule of rates prescribed for adequate service, this Court is not called upon to determine the matter judicially. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okl. 510, 101 Pac. 262; *Salt Lake City v. Utah L. & T. Co. (Utah)*, 173 Pac. 556, 3 A. L. R. 715. \* \* \*

"Appellant contends that natural gas is a commodity (*West v. Kansas Nat. Gas Co.*, 221 U. S. 229, 31 Sup. Ct. 564, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193), and that the formula worked out by the Commission for discounting bills denied the utilities pay for a portion of the commodity furnished. While, as a matter of fact, the product of natural gas as it comes from the wells and is put into interstate pipe lines may be a commodity of interstate commerce, the furnishing of natural gas to domestic consumers under the laws of the State of Oklahoma and the rules and regulations of the Corporation Commission is the rendering of a service, and the failure to transport gas with sufficient pressure to render service, notwithstanding meter readings which the Commission found indicate only volume, is a failure to render service. Volume of natural gas, it appears, is only one factor in indicating service, and is not the determining factor in indicating what service was rendered, or the pay which the utility should receive therefor, and failure to receive payment on the basis of volume measured at the consumers' meters is not therefore a failure to receive payment for service, and is not a taking of the property of the gas utility without due process of law.

"For the reasons stated, the order of the Corporation Commission is affirmed."



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# RATE RESEARCH



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# Rate Research

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New York, N. Y., May 27, 1920

No. 9

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### NEVADA

#### 226.6—Abandonment of Service

Nevada-California Power Company, Application for Permission to Discontinue Power and Lighting Service. Decision of the Nevada Public Service Commission, Denying the Application. April 17, 1920.

The issues in this proceeding arose under an application of the Nevada-California Power Company on November 1, 1919, proceeding under Section 36½ of the Public Service Commission Law, for authority to discontinue power-and-lighting service and to dismantle its transmission line or that portion of its system between Lundy, Calif., and Wonder, Nevada, covering a distance of 122 miles, upon the ground that the line in question was not paying and would not for the future pay the cost of its operation and maintenance.

Upon receipt of the public notice which was given by the Commission, District Attorney J. H. White, of Mineral County, on behalf of said county, the town of Hawthorne, and certain mining interests, entered a strong protest and, in cooperation with the Attorney-General of Nevada, began taking steps for the purpose of securing an injunction and the taking of other necessary legal action if arbitrary removal of the lines and service was undertaken by the Power Company as in the Rhyolite case some years ago when, without notice, it withdrew its lines from the Rhyolite District to the injury of the public and certain industrial and mining companies.

In addition to the protest and action of District Attorney White, the Nevada Wonder Mining Company filed a protest against the abandonment of service on the ground that it held a ten-year contract with the Power Company, requiring it to continue service upon payment of \$1,400 per month as a minimum to said Power Company until August 10, 1920, and that it desired to pay said minimum and retain the line for the purpose of prospecting its Bell Mountain Mine at Fairview after operations at Wonder had ceased.

The Commission says:

"From the annual reports of the Nevada-California Power Company there is set forth below a comparative statement of its operations for

the years 1911-1918, inclusive, which, it will be noted, shows that there was no water and current purchased by it during the years 1911 and 1912, and that it received no plant rentals for the five-year period of 1911-1915, inclusive. Further, that for the entire period of 1911-1918 the said Nevada company paid out \$278,852 for water and \$660,721 for current purchased, or a total of \$839,573, whereas beginning in 1916 it has received only \$327,712 in plant rentals, or \$511,861 less than it has paid out for the use of facilities which it owned, controlled, and included in said valuation charged against Nevada, and upon which rates are fixed. It should also be noted that the 'cost of power' (which includes power generated and current purchased) has risen from  $4\frac{1}{2}$  tenths of a mill in 1911 to  $4\frac{1}{2}$  mills in 1918—an increase of ten times, or 1,000 per cent in the unit cost of production. \* \* \*

"The question of the profitableness of the Nevada-California system as a whole is raised in this proceeding as well as that of the said Pacific Division or branch, and it is strongly urged that, if the system operations as a whole are profitable, the Commission should not authorize the withdrawal of an unprofitable branch or portion of the system without first ascertaining the injurious effect which such action might have upon the public dependent upon hydroelectric power-and-lighting service. \* \* \*"

The statistical analysis of the operations of the Pacific Power Corporation and the Nevada-California Power Company, taken from reports on file with this Commission covering a period of years, are submitted in tabulated form. The Commission says:

"Viewed from another standpoint, it may be noted that the net earnings for the years 1907 to 1910, inclusive, shown in Case U-44 (Public Service Commission of Nevada v. Nevada-California Power Company), decided January 29, 1914, amount to \$1,808,136. This latter sum, when added to the aforesaid net earnings of \$4,391,023 for the period of 1911-1918, inclusive, gives an aggregate net earning of \$6,199,159, which this company has made since 1907. Taking said \$4,074,465 shown in Table B as the average investment charged against the Nevada service (and the true average since the beginning of operations in 1907 is very much less than this amount), it will be noted that the above analysis shows that the company has, during the period 1907 to 1918, from said net income of \$6,199,159 made an aggregate net earning return of 150.22%, or, stated differently, it has paid out its aforesaid investment (\$4,074,465) and has remaining in net earnings \$2,125,090, which for the  $12\frac{1}{2}$ -year period since June 30, 1906, is a net return of 50.22%, or an average of 4.18% per annum.

"Without regard to the aforesaid intercorporate difference of \$511,861 in accounting between the Nevada-California and the Southern Sierras Company, which is probably creditable to the

Nevada system, based on the generous valuation and depreciation which we have charged against the Nevada business in Table C, it is interesting to note that said Nevada business has paid out the entire investment charged against it; paid all operating expenses, taxes, and a liberal depreciation for the renewal of the property as fast as it reaches the end of its useful life, while, at the same time, paying a return of 4.18% per annum on said investment, and finally leaving a valuable property free from all incumbrances in the hands of the company for the future, from which it may enjoy without hazard for the future the benefits which will accrue from Southern Nevada's present and ever-increasing mineral development.

"In the face of a showing of this nature, the Commission must necessarily proceed conservatively in disposing of an application such as the one before us for the abandonment of a branch of an exceedingly profitable public utility, and keep in mind not only the interests of the present consuming public, but also the charter-grant rights of the State for the protection and proper development of its mineral resources. Many of these resources are yet in the prospective or primary development period and therefore have not reached the production and milling stage, following which they will become profitable patrons of the Power Company.

"The Nevada-California Power Company controls the developed hydroelectric power in the Sierra Nevada Range of mountains along that portion of the western boundary of Nevada which serves the industries and towns of that great mineral zone within Mineral, Nye, and Esmeralda Counties. While certain lines or portions thereof serving particular mining camps, where the available ore reserves have been worked out, may be withdrawn from time to time and put into productive use in other sections of the State, it does not by any means follow that authority should be granted by this Commission for the withdrawal entirely from the State of one of the essential branches of the system, as is proposed by the application here under consideration. If no business is available between Hawthorne and Fairview after the expiration of the Wonder Mining Company's contract, and if after further application and public notice this appears to be the fact, we see no reason why the line should not be withdrawn to Hawthorne and the poles and wires used in serving other portions of the Nevada-California system.

"In this behalf it has informally been made to appear to the Commission that the Mina and Simon Districts, including the town of Mina, are desirous of securing power from the Power Company by the construction of a line from said districts to Hawthorne to connect with the company's main transmission line. Efforts to negotiate a contract for furnishing service to these communities have thus far failed, the Power Company contending that Mina and Simon should construct a line to a connection with its system at Millers instead of at Hawthorne. In the event that the Power Company

elects not to extend its line and give these district power-and-lighting service, we see no reason why Mina and Simon may not construct a line to Hawthorne and by a connection with the company's system at or near that point receive the necessary power by the payment of just and reasonable rates.

"This is, therefore, a developed new field of rich mineral resources wherein connection with and the rendering of service for the future will apparently afford a highly productive use for said Fairview line if developments are not successful at that point.

"The Mina-Simon field may be covered by the execution of necessary reciprocal contracts and arrangements for costs of construction including purchase of poles and wire and other materials now in the Fairview line and the construction of said line from Simon and Mina to Hawthorne for the purchase of electric energy from the Power Company on a wholesale basis. \* \* \*

"Returning to the consideration of that feature of the Power Company's application wherein authority is requested to withdraw its Lundy-Hawthorne line entirely from the State of Nevada unless certain contracts and guarantees are executed by the Lucky Boy Mining Company, now contemplating a resumption of mining operations, it should be stated that, while the Commission has no objection to the execution of a mutually reasonable and non-discriminatory contract between the Power Company and the Lucky Boy Mining Company, or, in fact, any other companies, it cannot give its consent to the withdrawal of the line between Hawthorne and Lundy and points intermediate and tributary to Hawthorne and the Nevada-California line, including the delivery of such energy from the Lundy power plant as may be necessary from time to time to adequately take care of Hawthorne and said intermediate or tributary points heretofore served, and for such other further energy as may be required for sale and delivery to other towns and to mining, milling, and industrial enterprises that may hereafter construct a transmission line under standard specifications to a point of connection with the Power Company's line at or near Hawthorne.

"In passing upon applications from public utilities for authority to discontinue, modify, or restrict public service, the rule of action to be observed, as we understand the Public Service Commission Act, is as follows: Upon public notice, and after hearing of a public utility's application to discontinue service and withdraw its property from the public use to which it is devoted, if it shall satisfactorily appear that, following a fair trial of operation, there has been and is a failure to meet legitimate operating expenses; that an increase in rates not exceeding the reasonable value of the service to the consumers and communities served will not produce adequate earnings to cover said expenses for the future; and that there is an

absence of a reasonable offer from the State, county, municipality, persons, firms, or corporations by which public service may be continued for the future through lease or purchase arrangements, the Commission will hold that there is not a sufficient public demand or necessity to justify further operations and that the utility may withdraw its property from the public service. But, in this behalf, it must be understood that the Commission cannot accept the plea that a public utility may, without consulting the public convenience and necessity which has become established, withdraw a branch of its system merely by establishing the fact that there is some pecuniary loss in the operation of the branch which it is desired to abandon, when the system as a whole is profitable. For example, the Power Company in this proceeding cannot be heard to complain that it should be absolved from the fulfilment of its contract obligation to the State to render service in return for its exceedingly valuable charter grant from the State to exercise the right of eminent domain and to collect tolls and charges under the franchise and certificate of public convenience Acts of Nevada, which enables the company to enjoy a practical monopoly of the territory served. So long as a public utility continues in the profitable enjoyment of its corporate rights and franchises the law imposes upon it the duty of furnishing adequate facilities to serve the public upon its entire system, and it cannot be excused from performing its full duty, without the consent of the State, merely because by ceasing operations on a part of its system the net returns would be increased.

"One of the principal duties of a public utility company is that of providing reasonable and adequate facilities for serving the public at just and reasonable rates. This duty arises out of the acceptance and enjoyment of powers, privileges, and property rights granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided simply because it will be attended by some pecuniary loss. See *U. P. R. R. v. Hall*, 91 U. S. 344; *New Orleans R. R. Co. v. Mississippi*, 112 U. S. 12; *St. Louis and San Francisco R. R. v. Gill*, 156 U. S. 649; *Munn v. Illinois*, 94 U. S. 113; *Baltimore Gas Case*, 130 U. S. 410; *Thomas v. Railroad Company*, 101 U. S. 71; *L. S. & M. S. R. R. v. Ohio*, 173 U. S. 285; *Atlantic Coast Line R. R. v. North Carolina Commission*, 206 U. S. 1; *Missouri Pacific Railroad v. Kansas*, 216 U. S. 262; *Oregon Railroad and Navigation Co. v. Fairchild*, 224 U. S.; *Chesapeake and Ohio R. R. v. Public Service Commission of West Virginia*, 242 U. S. 603; *Minnesota Rate Cases*, 230 U. S. 352; *Puget Sound Traction Case*, 244 U. S. 579.

"In the *Gill* case, *supra* (156 U. S. 649), the railroad insisted and was able to prove before the court that a maximum 3-cent fare law, adopted by the Legislature of Arkansas, was actually less than the cost of transporting a passenger over certain lines of its system.

In disposing of this question, the United States Supreme Court said:

“It therefore appears that the allegations made and the evidence offered did not cover the company's railroad as an entirety even in the State of Arkansas, but were made in reference to that portion of the road originally belonging to the St. Louis, Arkansas and Texas Railway, and extending from the northern boundary of Arkansas to Fayetteville in said State. In this state of facts \* \* \* it could not claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with the others in the expense and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the Act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the Act within the limits of the State of Arkansas.’

“To the same effect, see Puget Sound Traction Case (Seattle), 244 U. S. 579, wherein the same issues were raised by an order of the Washington Public Service Commission fixing rates. The court's decision follows the reasoning laid down in the Gill case, *supra*.

“See also, the North Carolina Case, *supra* (206 U. S.), wherein Chief Justice White distinguished between a rate-fixing case and a service case, by requiring the railway company to perform its duty to the public, even though the train service was performed at a loss.

“The question of jurisdiction of this Commission to act in the premises is raised by the Power Company, on the ground that it is acting in the capacity of an interstate utility. This challenge is not serious, for the reason that it is and always has been well settled that, in the absence of jurisdiction by the National Government, the State's power to act is just as clear as if the Power Company's property were located wholly within the State of Nevada. In this connection it is to be noted that the Federal Government has thus far not assumed regulatory control or jurisdiction over electric power-and-light companies.

“The question is raised by the District Attorney of Mineral County in this proceeding that the Power Company is operating within the counties of Mineral and Churchill without having obtained a franchise, and investigation proves that this is true. But, as before stated, the Power Company is operating under a franchise obtained in Nye and Esmeralda Counties and with authority of law for its extension into other counties served or to be served. In any event, the point is immaterial for the purposes of the case before us. The Power Company is clearly a public utility and, even though its operations may not be covered by a franchise in particular counties,



it has a practical monopoly at the present time of the hydroelectric facilities available for the district served in the counties of Mineral and Churchill. The right to regulate a public utility is not dependent upon whether it has a franchise or not. The fact that it is engaged in the public service settles the question and makes it subject to just and reasonable regulation by a commission lawfully created and authorized to act. We find the Nevada-California Power Company regularly engaged in the business of the public service in said Mineral and Churchill Counties, and must therefore hold that it is a public utility and fully under the jurisdiction of the Public Service Commission of this State for the purposes of this proceeding. There are ample authorities to sustain the position taken by the Commission regarding the jurisdictional and franchise questions stated above, but the points raised are so elementary and well settled as adjudicated law that it does not seem necessary to pursue the matter further at this time.

"In view of all the facts and circumstances hereinbefore referred to, the Commission is of the opinion that the application of the Power Company to withdraw its Pacific Division lines entirely from the State of Nevada should be denied and that that portion of its application for authority to withdraw the Hawthorne-Fairview line should provisionally be denied, with the understanding that if the Nevada Wonder Mining Company gives notification that it has no further use for power service and that there is no other business available in said Wonder and Fairview Districts the company may make application to the Commission for the purpose of selling and transferring said Fairview line into other sections of Nevada where it can be productively used."

## **OHIO**

### **620—Factors Affecting Rates**

Cleveland Telephone Company, Application for an Increase in Rates for Telephone Service in the City of Cleveland, Ohio. Decision of the Ohio Public Utilities Commission, Fixing Rates. May 12, 1920.

The Cleveland Telephone Company filed its application for a modification of a former order of the Ohio Commission fixing the rates for telephone service. The Company alleges that under the rates now in effect it is not receiving an adequate return on its investment. The Commission says:

"Cleveland is the sixth city of the United States. It is and has been growing by leaps and bounds. In said city the Cleveland Telephone Company has an investment of upwards of seventeen and a half million dollars in its plant, with which it is attempting to furnish service to the rapidly growing city and keep pace with its progress. If it does this, it must in the near future expend millions of dollars more. There is no need to mince words in discussing the situation. Conditions must be met as they exist. A utility cannot expand and

meet ever-increasing demand unless the public will grant to it a sufficient income to enable it to do so. Cleveland cannot afford to be without the best possible service which can be furnished, and its most enterprising citizens do not desire that it should be.

"The figures submitted of the receipts and expenditures, and verified by an examination of the records, show that under present conditions one of two things must follow—either the Telephone Company must cease to grow and to maintain its plant, or it must receive more revenue.

"About two years ago this Commission permitted the Telephone Company to put in Measured Service, which was the first experiment of the kind in this State. At that time a schedule of rates to be charged under the new system was filed and permitted to go into effect. Necessarily, it was a mere estimate. After more than a year's operation under this schedule the Commission, of its own initiative, instituted an investigation for the purpose of determining the kind and character of service which was being rendered, and to ascertain whether or not the schedule of rates under which the Company was operating was fair and reasonable.

"During the pendency of this investigation a new schedule was filed by the Company, together with an application for a modification of the former order."

#### **781—Adequacy of Service.**

"The change to measured service would of itself cause some interruption, but the extraordinary demands made upon the company growing out of war conditions, the difficulty in securing labor and material and the fact its force has been twice temporarily depleted by epidemics, seemed to have been the chief cause of inadequate service. The company appears to have been diligent in its efforts to maintain its plant and make extensions in so far as it could secure material and labor so to do.

"It is urged by the representatives of the city that the company should return to the flat-rate basis as a means of bettering the service, but the Commission does not take this view. There can be no disputing the fact that at times the service has been bad, but the defect was in spite of and not because of the measured service. The records show that the measured service has eliminated thousands of useless calls daily, and to that extent lessened the abuse incident to unlimited service. It also results in more equitably distributing the burden of maintaining the plant, making the large user pay in proportion to his use. Recent investigation by the Commission's experts show that there is a gradual improvement of the service, and we shall confidently expect and insist upon a still further improvement in the near future.

"When the telephone company instituted measured service it was difficult to arrange a rate schedule which would meet the requirements and properly distribute the burden of maintaining the plant, and after nearly two years of operation we have the benefit of actual experience which indicates the advisability of re-arranging the schedule in various respects. While this investigation was in progress the Commission spent two days in the City of Cleveland taking testimony, and every subscriber who had a complaint was given an opportunity to be heard. About thirty witnesses appeared, and, while there was some severe criticism of the service, the chief cause of complaint was regarding the disputes which arose as to the number of excess calls charged to subscribers. This was particularly true regarding the four-party Residence Service, where meters cannot be used to accurately register the number of calls, but where reliance must be placed upon the skill and accuracy of the operator, and where also it is possible for one subscriber to fraudulently shift his call to others on the same line. Recent investigation, however, indicates that since the operators have become more familiar with the new system and more skilled in ticketing, there is much less controversy in this respect.

"In the light of the experience of the last two years the new schedule has been so arranged as to further reduce friction along this line. An effort has been made to ascertain from actual experience the normal number of calls under each class of service, and raise the base rate to a sufficient amount to cover this normal use, leaving only the excess above that number to be paid by the large user on the excess-call basis. This will doubtless remove most of the disputes of this nature.

"After a careful examination of the proposed schedule, the Commission believes it should be approved in the main, but that a larger number of calls under the base rate should be allowed to the four-party residence service. The Four-Party Residence Service is used by far the greater number of subscribers and is the average man's class of service. The company proposed to raise the initial charge from \$2.00 per month to \$2.75 per month, allowing an increase from 50 calls to 55 calls per month. The Commission thinks that the number of calls should be raised to 65 per month, and, with this modification, the schedule will be approved to become effective June 1, 1920."

### **ILLINOIS**

#### **531—Prompt Payment Discount**

Abbott Light and Power Company, Application for Authority to Revise Its Rate Schedule. Decision of the Illinois Public Utilities Commission, Granting the Application. March 1, 1920.

The Abbott Light and Power Company filed with the Commission revised sheets to its rate schedules, which proposed an increase of one

cent per kilowatt hour on the energy furnished consumers. It is further proposed that a discount of one cent per kilowatt hour be allowed all consumers for payment within ten days of the date of bill. The Commission says:

"From the evidence in this hearing it appears that the proposed changes will not result in an increase of the bill of any consumer providing same is paid within ten (10) days of the date on which the bill is mailed or otherwise delivered to the consumer. It appears further that at the present time the utility is carrying upon its books a large amount of money in delinquent bills and that it is entitled to payment of these amounts. It appears that at present, due to the lack of a provision for discount, there is no incentive to consumers to pay bills promptly and that therefore these bills are allowed to run, through forgetfulness or negligence on the part of the consumer, until the aggregate amount represented thereby is a large sum. The utility finds it is facing ever increasing expenses of operation, and the necessity for paying its own bills promptly requires that its consumers should likewise pay their bills promptly."

## PENNSYLVANIA

### 630—Cost of Supplies

City of New Castle v. Mahoning and Shenango Railway and Light Company, Application For Authority to Increase Its Rates. Decision of the Pennsylvania Public Service Commission, Granting an Increase. March 2, 1920.

The City of New Castle, after the application for an increase in rates was made, filed a complaint against the Mahoning and Shenango Railway and Light Company, alleging that its facilities and service were unsafe and inadequate. The Commission says:

"It is to be observed that the work to be done by the company is quite extensive in order to make its facilities safe, adequate and sufficient. The company signifies its willingness to do the work when in funds for that purpose, and urges the approval of its application for an increase in rates that it may thereby be supplied with the financial faculties required. It contends that the tariff now in force does not produce sufficient revenues to meet the operating expenses, and when account is taken of taxes, depreciation and a fair return on capital invested, that this division of its system of railways is being operated at a considerable deficit annually. In this application for increased rates only one division of the company's system which is operated in Pennsylvania has been presented for consideration, and the Commission is not advised what are the operating revenues and expenses on the entire system thus operated. Part of the lines owned by the company are operated in the State of Ohio.

"Admittedly a public utility should not be required to furnish its

service at less than cost, or be deprived of a sufficient surplus in addition, out of earnings, to provide for depreciation and a fair return on invested capital, providing there is an efficient and economic operation of the utility and the rates required for this purpose are not unjust and unreasonable.

"Conceding that there has been a substantial increase in operating expenses, the question remains whether this increased expense can not, at least, be partially liquidated by a more efficient and economic operation of the utility than by resorting to an undue increase in rates. It is argued with considerable force that the purchasing power of the dollar is only about one-half what it was prior to the World War, and that a ten-cent fare under present high prices for labor and materials is no more than the equivalent of the former five-cent fare which was acquiesced in by the public without complaint. *Non constat*, however, that the five-cent fare was not producing more revenue than the operating company was entitled to. In any event, considering the populous district operated in, we are not convinced from the evidence now before the Commission that a ten-cent fare on this division of the company's system is either warranted or would result in producing the desired revenue under existing conditions.

"While we are not disposed to wholly ignore the urgent demand of the company for additional revenues to comply with the order of the Commission for the improvement of its facilities and service, the increased rates approved will be made contingent upon these improvements being promptly made. A safe, adequate and sufficient service, no doubt, will contribute to operating revenues, and the maintenance of such service is the *sine qua non* of a charge for that purpose. Pending an inspection or report by the company of the completion of the improvements ordered, made on or before October first next, permission is granted the company to file a tariff for a seven-cent cash fare or six tickets for forty cents, and twenty school tickets for one dollar, to become effective on one day's notice, and to be in effect until the further order of the Commission."

## WISCONSIN

### 300—Investment and Return

Wisconsin-Minnesota Light and Power Company, Application for a Revision of the Gas Rates Effective in the City of Chippewa Falls. Decision of the Wisconsin Railroad Commission Granting an Increase in Rates. May 1, 1920. (Begun in 17 Rate Research p. 115.)

### 365.2—Sinking Fund Methods.

"We refer here to the relation of the manner of providing for depreciation to the value to be used as a basis for fixing rates. Provision for depreciation in this case will be made from a sinking fund basis, which basis assumes that a part of the earnings remaining after

direct operating expenses have been met will be credited to the depreciation reserve so that the reserve will be built up in part by direct charges to operating expenses and in part by interest credited to it. The result of this is that to the extent that reserve capital is invested in property and plant the business really pays interest to the reserve for the use of such capital. The fact that this utility has not established a depreciation reserve does not, in our opinion, make it unfair to use the sinking fund basis for depreciation. Depreciation is an operating expense, and the failure of the utility to make provision for depreciation does not seem to us to require that it be given an allowance for depreciation in a rate case upon any other basis than that which would prevail if it had recognized its obligation to provide for the depreciation.

"Having in mind all the elements which must be considered in arriving at the fair value of the property in so far as the record in this case permits us to judge of these elements, and giving full consideration to the testimony relative to valuation which has been submitted in this proceeding, it is our conclusion that a value of \$106,500 is the fair value to be used in this case."

#### 340—Rate of Return.

"The question of what rate of return should be considered in this case is one not as easily determined as might be desired. There are some conditions in Chippewa Falls which make it appear that the company should not expect at this time and under existing conditions as to the development of its business to earn the full return which is usually considered fair. The testimony of its valuation engineer is to the effect that sales in Chippewa Falls have not reached the point of saturation, and this testimony is borne out by a comparison of the conditions in Chippewa Falls with conditions in other plants. Sales per meter are somewhat low, the number of meters per mile of main is also somewhat low, and, naturally, the sales per mile of main are lower than in other communities. It seems clear that there is considerable room for development of the business on the basis of the present distribution system. In fact, the degree of saturation attained leads us to believe that the property should still be considered in the development stage and that a return of 8% upon it is not to be expected until some further development has been reached. To consider this property as still in the developmental stage may seem inconsistent with the fact that it has been installed for a great many years, but the fact that sales have not yet reached the saturation point, together with the fact that during recent years the sales have been growing very rapidly,—at least up until recent months—indicates that the full development has not yet been reached.

"One other matter to be considered in connection with the rate of return is the fact that a considerable part of the property is prac-

tically worn out or has become inadequate. Both of the gas machines are almost of an obsolete type, according to the testimony of the engineer who made the valuation for the company, the holder is inadequate, and much of the equipment is old and in poor repair. In fixing the valuation at \$106,500 we have followed the principles laid down by this Commission and other bodies in a large number of cases, feeling that the determination of the amount of the rate base could most properly be made along those lines. Considering the poor condition of the property, however, we think it unfair, even aside from the matter of the incomplete development of the business, to provide a rate schedule designed to yield what is ordinarily considered a full return. In view of all the circumstances, we are convinced that a rate schedule provided at this time which would yield materially more than a 6% return upon the property would not be fair to all the parties concerned.

"Upon the basis of a valuation of \$106,500 a 6% return would require \$6,390 per year, and since we have concluded that with proper efficiency of operation during the last half of 1919 there should have been available \$863.26 for the half year for return on the property, it follows that in order to yield half of a full year's return of 6%, or \$3,195, there would have been required additional revenue to the amount of \$2,331.74. This is equivalent to 22.6 cents per thousand cubic feet of gas sold."

## REFERENCES

### GENERAL

#### 781.5—Inductive Interference

Committee on Inductive Interference. Report to the National Electric Light Association at the Forty-third Convention Held in Pasadena, California, May 18-22, 1920. Pamphlet 11 pages.

In recognition of the growing importance of the inductive interference situation, the Committee on Inductive Interference was established at the beginning of this year as a separate committee.

The report gives a resume of the prominent features of the situation, notably the steadily increasing extent and seriousness of the problems involved attendant upon growth of the line systems of both power and telephone companies and the increasing susceptibility of telephone circuits and apparatus to disturbing influence, the fact that the more difficult problems are those involving the Bell telephone interests, which, through the American Telephone & Telegraph Company, have the services of a specialized staff giving thorough study to all phases of the subject; and the real danger of development or establishment of practices which will restrict the availability of these services to the public.

The situation requires handling on broad lines with full recognition that both services are essential to the public. Such handling is possible only with full cooperation between the interests concerned, based upon careful investigation and mutual understanding of the technical problems involved, both as to the conditions giving rise to disturbing influences and as to the conditions determining susceptibility thereto.

## COURT DECISION REFERENCES.

## 224—Rates.

City of Pueblo v. Public Utilities Commission of Colorado, et al. Decision of the Supreme Court of Colorado. January 5, 1920. Rehearing Denied March 1, 1920. 187 Pacific 1026.

The Pueblo Gas and Fuel Company maintains a plant in the City of Pueblo, for the manufacture, generation and distribution of gas for heating, illuminating and power purposes, and operates under Ordinance No. 851, which fixed the rates to be charged by the gas company from September 18, 1911, up to and including the year 1931. On application, filed June 26, 1918, of the gas company, the Public Utilities Commission of the State of Colorado made and entered its order raising rates. The City of Pueblo has at all times denied, and now denies, the jurisdiction of the Commission to fix such rates in Pueblo.

Article 10, Sec. 3 of the charter of said City of Pueblo, which provides for the fixing of rates by ordinance, recites:

"That rates, fares or charges shall not be changed without examination by competent inspectors, and the council shall have power to inspect the books and affairs of any public utility corporation as a part of such examination."

The same section of the Pueblo charter also provides:

"The council shall have power by ordinance to fix and regulate rates, fares and charges by public utility corporations and to change the same every five years."

In setting aside the order of the Commission, the Court says:

"The opinion of this Court, in *City and County of Denver v. Mountain States Telephone and Telegraph Co. et al.* 184 Pac. 604, was handed down January 14, 1919, and a rehearing denied thereon October 6, 1919. \* \* \*

"But for this provision of the charter, it is conceded by defendants in error that the jurisdiction of the Public Utilities Commission to fix the rates in question would be settled here by the decision in the telephone case wherein such jurisdiction was denied. But it is now contended on behalf of defendants in error that by virtue of this five-year provision of the charter of the City of Pueblo, said city has repudiated the power given it under Article 20 of the Constitution; that the effect of such repudiation, so far as the fixing of the rates of Public Utility Corporations is concerned, is to remove said city from operation of said Article 20 of the Constitution and leave the Public Utilities Commission with jurisdiction to fix such rates therein. This argument is based upon the assumption that the failure and refusal of the City to readjust such rates oftener than once in five years must necessarily result in inequality and injustice. Whether such will be the result, time and experience alone can demonstrate, but if the body having jurisdiction to fix rates by compulsion fixes a rate that is unreasonable or confiscatory, nothing is more definitely settled than that the courts, when applied to under such circumstances, will afford relief.

"It having been finally determined that the Public Utilities Commission is without jurisdiction to fix rates in home rule cities, it is impossible that that body should acquire any such jurisdiction because such cities proceed illegally in the discharge of that duty, or fail to act at all.

"We are therefore of the opinion that every question raised in the instant case has been finally settled here in *City and County of Denver v. Mountain States Telephone & Telegraph Co. et al.* (No. 9443) 184 Pac. 604. The order of the Public Utilities Commission entered herein is therefore hereby set aside and held for naught."



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# Rate Research

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No. 10

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### WISCONSIN

#### 300—Investment and Return

City of Milwaukee v. Railroad Commission of Wisconsin, and the Milwaukee Electric Railway and Light Company, Complaint Against Increase in Rates. Opinion, Order and Return of the Railroad Commission of Wisconsin to the Wisconsin Circuit Court of Dane County, January 5, 1920.

The City of Milwaukee filed a complaint with the Wisconsin Circuit Court of Dane County to review the Wisconsin Railroad Commission's orders of June 1, 1918, and October 30, 1919, in the case of the Milwaukee Electric Railway and Light Company, alleging (1) "that there was a binding franchise limitation under which the fares in the City of Milwaukee could not exceed 5c.; (2) that the valuation was excessive for various reasons and is in fact fixed by a decision of the Supreme Court in the case of T. M. E. R. & L. Co. vs. Railroad Commission, 169 Wis. 421. In relation to this matter the position of the City Attorney is that the Railroad Commission is bound by the valuation of 1910 and that this should be brought down to date instead of making a new valuation. (3) That the earnings of the company in the past have been excessive and that these excess earnings should be used by the company in paying increased costs of operation before any fares are raised in the Milwaukee district; (4) that the depreciation reserve set aside is larger than the actual accrued depreciation and that the value used by the Commission is too large to this extent; (5) that the rate of fares fixed are excessive and will give too large a return; (6) that an unreasonable burden has been placed upon riders in the single fare area by requiring them to meet alleged deficits in the suburban area."

#### 224.5—Rates Fixed by Contract.

Regarding the City's contention that by Section 6 of the city ordinance, the rate of fare shall not exceed 5 cents for a single fare, the Commission says:

"This is purely a question of law. We have considered the question carefully in view of the decisions of our own Supreme Court and

the Supreme Court of the United States. It is our judgment that this contention of the City Attorney cannot be sustained and we believe it to be the clearly established law of this state that when the state exercises its power of control over such rates and delegates the exercise thereof to the administrative body—the Railroad Commission—that the full power in connection with such rates is vested in the Commission. This is our understanding of the decisions.”

### 310—Valuation.

“The question of valuation of this property has been gone into by the Commission not only in the decision of August 23, 1912, 10 W. R. C. R. page 1 et seq., in the Service Case, 13 W. R. C. R. page 178, et seq., the Woehsner Case, 15 W. R. C. R. 724; but has been subsequently intensively studied in connection with the decisions of June 1, 1918, found in 21 W. R. C. R. page 1, et seq.; the decision of April 4, 1919, the decision in which case is a part of the record herein but is not appealed from. In view, however, of the contentions made by the various parties to these proceedings and in view of the exhibits placed before the court in the hearing under review, some further discussion of the question of values appears not unwarranted at this time. \* \* \*

The Commission in its decision of August 23, 1912, found the value of the railway property for the purposes of that case as being about \$10,300,000 as of January 1, 1910, which value, however, did not include certain railway property then belonging to The Milwaukee Light, Heat and Traction Company which afterwards came within the single fare area upon the extension of that area by subsequent decisions of the Commission. After the consolidation of various street car companies, which took place before 1897, certain property belonging to the different lines consolidated was discarded or replaced by other property and extensions and improvements took place, and the question of the fair value of the property as of January 1, 1897, has been a matter of contention between the company and the city during all the years since the question of the fare rates in the City of Milwaukee arose at the time of Judge Seaman's decision. On the part of the company, it has always been claimed that the actual cash investment in the railway property as of January 1, 1897, was not less than \$8,885,000. On the part of the city this has been denied and the city has continuously claimed that the fair value of the railway property in existence on January 1, 1897, did not exceed \$4,488,408.25. The Commission commenced its examination of the property for purposes of valuation about 1907. Its engineers made an inventory of the property and a reproduction cost estimate as of January 1, 1907, and later another reproduction cost estimate as of January 1, 1910, the 1910 valuation being based largely upon the inventory used as of 1907 amplified to include physical inventory of the additions to property between 1907 and 1910. Not only the inventory thus arrived at but the unit values based upon the different units by the Commission in these reproduction

cost estimates have always been attacked and questioned by the company since made.

Practically the only inventory of the actual property in existence as of about January 1, 1897, is the inventory made by W. J. Clark of the General Electric Company who placed upon this inventory a reproduction cost of \$5,153,000. This valuation by Clark was a reproduction cost estimate. It was before Judge Seaman at the time he rendered his decision and was before the Commission at the time it rendered the decision of August 23, 1912, and in connection with the latter decision, the Commission's engineers rechecked this inventory and placed their own unit costs upon the various units, arriving at a reproduction cost of \$4,488,000. The Commission says:

"As the amount of cash investment by the security holders of the respondent company on January 1, 1897, depends somewhat upon the value placed upon certain exchanged securities, it is somewhat difficult to arrive at what can be stated as accurately measuring the actual cash investment of the security holders. Judge Seaman fixed this amount at \$8,885,644.17. He found, however, that his figure would not meet the issue as it was the value of the investment and not the amount paid which must control. The actual historical installation costs of the actual physical units in existence on January 1, 1897, has never been ascertained. It was probably less than \$7,000,000. It was shown that some part at least of the property was purchased at costs considerably above those prevailing in 1897 and later. Reproduction cost of these units, Judge Sherman found, would exceed \$5,000,000. As we have shown in the decision 21 W. R. C. R., page 34, *et seq.*, Judge Seaman evidently arrived at the figure of \$7,000,000 as representing, for the purposes of the case at the time it was heard, the fair value of the investment in 1897 for rate-making purposes.

"After the decisions of the Commission of August 23, 1912, and November 25, 1913, 13 W. R. C. R. 1, and on December 5, 1913, the Commission ordered the Engineering Department to make a complete re-inventory and revaluation of the entire property of the company. This re-inventory and revaluation ordered at that time resulted in the physical reproduction cost estimate of the engineers known as the valuation of January 1, 1914, and it is this physical valuation which the Commission after considering every element in the case, including the entire history of the property, has concluded is fairly representative of the value of the property as of January 1, 1914. This estimate of the engineers will be hereafter referred to as the valuation of January 1, 1914. It is the most carefully made and elaborate valuation ever made by the engineers of the Commission and the State Engineering Department. It is based upon the most complete and thorough investigation ever made by that Department, both as to inventory and unit prices used. It was made in pursuance of the orders of the Commission at a time

when the personnel of the Commission was exactly the same as it was at the time of the decision of August 23, 1912. Different members of the staff under whose direction the work was done were examined and cross-examined as to all phases of the work. See 21 W. R. C. R., 12, *et seq.* Except for minor land values, the Commission found no reason, nor was any testimony introduced showing why the Commission should not accept and rely upon this work of the Engineering Department.

"As pointed out in the decision of June 1, 1918, if to the 1910 valuation there be added the additions per books to December 31, 1913, it will be found that the value of the Milwaukee street railway property as of December 31, 1913, upon this basis, is less than the value of the property of the Milwaukee street railway as found in the appraisals and valuation by the engineers as of January 1, 1914. For some discussion of this question see 21 W. R. C. R., page 18, *et seq.* As pointed out, part of this difference is due to the different percentages used for overhead, the engineers using substantially 15% for overhead in this valuation.

"As to the relative dependability of the two inventories and appraisals of January 1, 1910, and January 1, 1914, there can be no question that the inventory and appraisal of 1914 is far more reliable and dependable. The inventory itself of 1910 was based upon and is supplementary to the inventory and appraisal of 1907, while the inventory and appraisal of January 1, 1914, is a complete re-inventory and rechecking of the entire physical property of the company. The January 1, 1914, appraisal, representing as it does a complete appraisal and inventory of the physical property of the company made with great care and in the greatest detail, must necessarily be more dependable and reliable as a basis for the determination of value than are any of the early inventories and appraisals.

"The question arises, therefore, whether this Commission should disregard the work of the Engineering Department resulting in its valuation of January 1, 1914, and if it is not justified in disregarding it but must and should consider it, then what effect should be given to it. As we have shown, there is no reason to question the fairness of this appraisal either as to inventory or unit prices used. There appears to be no question but that the engineers proceeded on correct legal principles in making the valuation. Is it so out of line with any other of the elements which must be considered in connection with arriving at a fair value of the property as to warrant the Commission in disregarding it? At this point, it may be well to revert to some fundamental legal principles relating to valuation." (Citing Cases.) \* \* \*

"In *Denver vs. Denver Union Water Company*, 246 U. S. 178, it was held that it was proper to estimate complainant's property on a basis of present market value as to land and reproduction cost less

depreciation as to structures, but it was not held that this was the only proper basis on which to fix values for rate-making purposes.

"One of the elements which has always been given consideration is investment prudently made. This element is unquestionably one of the more important elements and, at a time of very widely fluctuated unit costs and abnormal conditions, should have, as we have said in various cases, a large influence in determining the final value. See the discussion of this question in our decision of June 1, 1918, 21 W. R. C. R., 19 *et seq.*, 24 *et seq.*

"In arriving at our conclusion that the engineers' valuation of 1914 fairly represented the value of the property as of that date, and that the fair value for rate-making purposes could be based on that valuation, with additions to property since, the Commission took into consideration all of the elements which have been referred to, including the question of prudent and wise investment. If investment is not given some weight in connection with this matter of determining fair value, then under present conditions we have very violent changes in value enormously increasing the amount upon which the public must pay rates and at the same time the likelihood that investments made at present high costs would be given no effect in the future, were unit costs, as is in the end likely, to become considerably lower than at present. In other words, while we must recognize the principle set forth in the cases just quoted, fair value must in the end be based upon sound judgment taking all elements into consideration. To say on the one hand that investment or historic cost is the sole criterion may lead to an unwise judgment, as much as to say that the fair value is in all cases controlled by reproduction cost on prevailing unit prices. Evidently the Supreme Court of the United States had such a situation as at present exists directly in mind when in the Consolidated Gas Company case (212 U. S. 19, p. 52) it said:

"We do not say that there may not possibly be an exception to it when the property has increased so enormously in value as to render a rate permitting a reasonable return upon such increased value unjust to the public. How such facts should be treated is not a question now before us, as this case does not present it. We refer to the matter only for the purpose of stating that the decision herein does not present an inquiry into the question when, if ever, it should be necessarily presented."

"What is there said is subject only to this criticism: That the word 'value' might be taken as being absolutely synonymous with 'exchange value,' which in turn might be taken as depending upon prevailing unit prices. The point is that the Supreme Court of the United States clearly recognized that a situation might arise where reproduction cost on greatly enhanced unit prices must not be given a controlling influence. And it is well perhaps to point out here

that the unit prices used in the valuation of 1914 were not inflated or war unit prices, but prices which can be said to have represented normal installation prices largely prevailing during the periods of construction of the company.

"We have, then, an engineer's physical valuation fairly made under normal conditions, just and fair in itself both to the public and to the company as one of the elements for arriving at fair valuation. The Commission, however, did not rest upon this element alone, but took into consideration, as we have said, all other elements, including that of prudent investment.

"In our decision of June 1, 1918, we discussed this question of investment at length and made quite a study of what we considered to represent investment reasonably and prudently made by the security holders of the company. We will not repeat what we there stated. This was not the only element which was taken into consideration. All other elements referred to in the cases were considered by the Commission in arriving at its final valuation, including the elements of going value, the question of depreciation, depreciation reserves and assets covering depreciation reserves, working capital, materials and supplies, etc. As is often said, as to the weight that is to be given to all the different elements, this is a matter resting upon sound judgment.

"In the engineering valuations of 1907, 1910 and 1914, made by the Commission's engineers, as well as in all engineering estimates made by representatives of the company or city, certain so-called common property was considered and apportioned between the various utilities, such as railway, electric and heating. Power property, power lines, buildings, etc., often had a common use. Their value therefore had to be apportioned between the different utilities. Such apportionments were attempted to be made upon the use of the property at the time the different valuations were made, but the use of so-called common property changed from time to time, and property, the value of which would be apportioned on the use as of the time when the valuation was made, would, if reapportioned upon the use as of January 1, 1914, receive a materially different apportionment. The relative growth of the several utilities of the company has been such that the proportionate use of the joint property by each utility has changed with the passage of time. This fact, as we shall hereafter more clearly show, not only makes it extremely difficult, if not impossible, to build up a present fair value for any single utility of the company by simply taking the valuation of any utility at an early period and making book additions to that utility thereafter, but also makes a comparison between investment costs of any one utility per books and the valuation of 1914 for that utility not as valuable for comparative purposes as a comparison of total investment of all utilities of the company with the total valuation of all utilities as of January 1, 1914. So in the decision of June



1, 1918, the comparison is made on the basis of investment in all property and values of all property of the Milwaukee Electric Railway and Light Company. This change of use is especially pronounced in relation to various forms of electric property which had a common use and had to be apportioned. In making the apportionment of this common property the engineers in arriving at their valuation for January 1, 1914, apportioned the common property on the use as of that date. As we have explained, this use is in many respects quite different from the use which had existed at an early period and of course is considerably different from the use of many elements of the common property as used today. The comparison between investment and engineering values was therefore made in the June 1st decision as to the property as a whole.

"For the purposes of making this comparison the Commission took, though it has never finally decided the matter, the investment in the electric utility of January 1, 1897, to be around \$1,300,000 or \$1,372,137.61. The company claims this investment figure is many hundreds of thousands of dollars below the actual cash investment at the time. For the reasons shown in our June 1, 1918, decision, the reasonable and legitimate investment in the railway property was taken as being substantially represented by the figure \$7,000,000 and here it may be well to call attention to the fact that this \$7,000,000 is not taken by the Commission as necessarily representing the actual installation cost of the various elements considered separately which went to make up the railway property in existence on January 1, 1897. Nor is it taken as necessarily representing all of the cash which may have been actually invested in the railway property as of January 1, 1897. It did and does represent in the opinion of the Commission as near as can be arrived at what Judge Seaman calls the fair value of the investment or what would be a fair investment figure to take as of January 1, 1897. The actual cash invested was found by Judge Seaman to be not less than \$8,885,000 but he found it unnecessary to finally adopt that figure for the purposes of the case. As we have shown in our June 1, 1918, decision, reasonable investment may not always be the same as, and in fact in many instances may be somewhat different from the so-called historical costs, using the words 'historical costs' as including only the actual installation cost of the various elements of property then in existence. The actual historical cost of the property in the sense above referred to is actually unascertainable. The Clark appraisal of January 1, 1897, the Commission's revaluation of his appraisal many years afterwards, the city's various attempts to appraise the property of January 1, 1897, are engineering reproductive estimates of property as of January 1, 1897. Using the figures above set forth as a basis to fairly represent legitimate investment as of January 1, 1897, the comparison was made in the June 1st decision with the engineers' valuation of January 1, 1914. The investment prices on the figures thus used were for January 1, 1914, for all property of the Mil-

waukee Electric Railway and Light Company either \$26,088,604 or \$26,160,000 as compared with the actual physical valuation of the property as of January 1, 1914, of \$26,093,372."

#### 314—Overhead Charges.

"In connection with this valuation of January 1, 1914, the most complete study of overheads was made that has ever been made by the Engineering Department. Experience has led the Commission to have not the slightest question as to the propriety of the overhead used by the engineers in this valuation. The history of overheads as used by the Wisconsin Commission may be briefly stated practically in the words of a former member of the Commission. The Commission began its work by allowing 10% on the total cost of the work, including land, for organization, administration and engineering expenses and for interest during construction and contingencies. This allowance, however, was soon found to be too low, and was therefore increased to 12%. Soon after this change was made, the Commission entered upon a more extensive investigation of these charges with the result that the allowance for overhead items was increased to 15% on the total cost of the plant, including land. This allowance of 15% may be compared with the allowance of some other Commissions in the United States.

"In New York the Commission for the First District has allowed from 15% to 21.8%. See *Mayhew vs. Kings County Ltg. Co.*, 2 P. S. C. R. (1st Dist.) 659—21.8%. *Re Queensboro*, 2 P. S. C. R. (1st Dist.) 544—19%.

"And in *Re Bronx Gas & Elec. Co.* (N. Y. 1st Dist.) P. U. R. 1916 A 440, where the records of the company failed to show the amount expended for such purposes, an allowance of 20% was made to cover engineering, supervision, contractors' profits, contingencies and incidentals.

"In *Fuhrman vs. Buffalo Gen. Elec. Co.* 3 P. S. C. R. (2nd Dist.) 739, the allowance was 16 $\frac{2}{3}$ %.

"In *Montana W. & S. Ry. Co. vs. Morley*, 5 Mont. R. C. R. 65, the allowance was held to 10%, but on application to the Federal Court for injunctive relief, Judge Hunt allowed 25% for overheads. *Montana W. & S. Ry. Co. vs. Board*, 198 Fed. 991.

"In another Federal Court case on appeal from an order of the Arizona Commission, Judge Morrow held that the Commission's estimate of 12% for overheads was too low. *Bonbright vs. Corp.* Com. 210 Fed. 44.

"The California Commission allowed 15% in *City of Palo Alto vs. Palo Alto Gas Co.*, 2 Calif. R. C. R. 300.

"In the valuation by the Great Britain Railway & Canal Commission

of the property of the National Telephone Company, the Commission added 31.4% of the reproduction cost of over ten million pounds sterling. The case is reported in 16 Am. T. & T. Co. Com. L. 491.

"The New Hampshire Commission allowed 15% in re Berlin El. Lt. Co. 3 N. H. P. S. C. 174, 21 Am. T. & T. Co. Com. L. 781.

"In re Appl. Lincoln Tel. & T. Co. 19 Am. T. & T. Co. Com. L. 134, the Nebraska Commission was convinced that 17.2% allowed by the engineers was conservative and remarked that many commissions allow over 20% for these items.

"In re Public Ser. Gas Co., 1 N. J. P. U. C. 433, 15 Am. T. & T. Co. Com. L. 354, the allowance was 17.6%.

"In the Des Moines Gas decision which withstood attack in the Supreme Court, the allowance was 15%. Des Moines Gas Co. vs. Des Moines, 238 U. S. 153."

(To be Continued)

## PENNSYLVANIA

### 224—Rates

Borough of Lansdowne, et al, v. John M. Drew, Complaint Against Increase in Rates. Decision of the Pennsylvania Public Service Commission, Sustaining the Complaint. March 2, 1920.

In December, 1917, the Commission issued a Certificate of Public Convenience to John M. Drew, which was extended in November, 1918, under which he has operated a line of motor busses in Delaware County from Darby, through the Borough of Lansdowne, to the Sixty-ninth Street Terminal of the Philadelphia Rapid Transit Company's system in Upper Darby Township.

The respondent filed a new tariff in which he proposed to increase his rates. The complainants allege that the increase would be unreasonable and unjustly discriminatory. The Commission says:

"It is not to be presumed that the Commission will, or should, attempt to regulate small auto-bus or other vehicular concerns under the same standards of valuation and rates of return that apply to utilities in which capital in large amount is invested by incorporated companies. Elements such as the employment of individual time and talents in the development of such businesses, and which deserve reward entirely apart from any measure of fixed return upon the meager amounts of capital invested, must be considered if these small and worthy enterprises are to be encouraged in giving the best possible public service. But it must also be considered, as in the respondent's case, that such utilities are given free, excepting only a few inconsequential local assessments or taxes, exclusive rights of way over streets and highways maintained at public

expense, and all the benefits of police and other protection which the State and local communities furnish.

"In declining to permit the tariff of increased fares to go into effect at this time, the Commission does so with a view of permitting the respondent to renew application within a reasonable time in the future, if the necessity for business extension and development, or other causes, shall warrant. To do so, however, will require that the respondent shall so order his business accounts and management as shall make clear the claims upon which he may justify increase in the filed tariff."

### PENNSYLVANIA

#### 129.3—Refusal of Service

George W. Bryson v. Greencastle Light, Heat, Fuel and Power Company, Complaint Against Refusal of Service. Decision of the Pennsylvania Public Service Commission, Ordering the Company to Restore Service. February 25, 1920.

On November 6, 1918, the Greencastle Light, Heat, Fuel and Power Company disconnected the residence of the complainant, George W. Bryson, No. 31 South Carlisle Street, Greencastle, from its service lines and refused to furnish him with electric light service. This action was based on a claim that the complainant was in arrears to the amount of \$1.66, consisting of a charge of \$1.50 for "reconnecting meter" (when in the latter part of April, 1918, he moved from Allison Avenue to South Carlisle Street) and a surcharge of 16 cents discount, not allowed by the company because the reconnection charge had not been paid when the bills were discounted.

The complainant alleges that the "reconnection meter charge" is unjust and unreasonable, and if so found by the Commission, the act of the respondent company in discontinuing and refusing to furnish service was unwarranted.

The Commission says:

"The rule of the company under which it claims the right to collect the charge of \$1.50 is as follows:

" 'When a consumer, at his own request, has his service discontinued, the charge for reconnecting meter at the same or new locaiton, will be \$1.50.'

"Under this rule, as worded, in order to justify the charge of \$1.50, the meter must be reconnected and the company perform the work necessary to reconnect same. In this case the meter at No. 31 South Carlisle Street was not reconnected by the respondent company, nor did the company perform any actual physical service in connection with the meter.

"In our opinion, this rule is not applicable under the facts adduced. It does not give notice to the consumers of the company that a charge of \$1.50 will be made when a consumer changes his place of residence and service is furnished at the new residence without the reconnection of the meter or the performance of any physical service in reconnecting the meter."

## OHIO

### 112.5—Ordinance Rates

United Fuel Gas Company v. Village of New Boston, Appeal From an Ordinance Fixing Rates to be Charged for Natural Gas. Decision of the Ohio Public Utilities Commission, Dismissing the Appeal. April 2, 1920.

This is an appeal of the United Fuel Gas Company from a rate ordinance passed by the council of the village of New Boston, Ohio, November 24, 1919, fixing certain rates to be charged for natural gas supplied the public and private consumers in said village.

A motion was filed by the village asking that the appeal be dismissed for the reason that the Public Utilities Commission has no authority in the premises and is without jurisdiction to hear and determine the appeal.

The right of the gas company to furnish its product in said village is by virtue of a franchise ordinance passed October 14, 1909, and accepted by said gas company October 22, 1909, and runs for a period of twenty-five years.

As a basis for its claim that the Commission has no jurisdiction, the motion cites the following extract from said franchise ordinance:

"That said grantee, its successors and assigns as a condition to, and in consideration for the exercise of the rights, privileges, powers, and grants herein contained shall furnish for public and private use to the said village of New Boston and its inhabitants, such natural gas at a reasonable price in no case to exceed the rate of 40 cents per thousand cubic feet for the period of ten years from and after the date of which this ordinance shall take effect as hereinafter provided, and to be thereafter subject to the provisions of the statutes in the state of Ohio, in such case made and provided."

The Commission says:

"The municipality relies upon the decision of the supreme court of Ohio in the case of *City of Cincinnati v. Public Utilities Commission*, 98 O. S. 320, in support of its contention.

"In the Cincinnati case, the court's decision was based upon the fact that the franchise ordinance included a provision that the grant is subject to the right of the city to regulate the price of natural gas

from time to time as provided by law,' and that the grant to the gas company was 'subject to and dependent on the right reserved to the city to fix the price of gas from time to time as provided by law.'

"We do not think that this decision is applicable to this case. The Commission has not before it the entire franchise ordinance, but as the section above quoted is all that was submitted by either of the parties, it assumes that that provision contains all that is said in the franchise ordinance with reference to the rates and the right to regulate the same.

"In the Cincinnati case the city reserved the right throughout the entire term of twenty-five years, to regulate the price of gas from time to time, and the grant was subject to and dependent on that right.

"In the present case, the franchise ordinance fixed the price of gas for a period of ten years and then provided that the price of gas should be 'thereafter subject to the provisions of the statutes in the state of Ohio in such case made and provided.' We think that this provision neither added to nor took from the force and effect of the contract with reference to the price of gas. In effect, it is as if this provision had not been inserted at all, for it left the parties at the end of the 10-year period, just where they would have been left under the law if this provision had not been inserted.

"The franchise ordinance contained at least two provisions, one of which granted the right to the gas company to furnish gas for a period of twenty-five years, and the other fixed a price for the first ten years, leaving the price thereafter to be fixed according to law. There is not in this franchise ordinance, any such provision as was contained in the Cincinnati ordinance, granting to the village the right to fix the price of gas throughout the life of the franchise ordinance, nor for any period beyond the first ten years. The contract so far as it related to the price of gas, expired in ten years, and thereafter it is subject to be regulated by the laws then in force as fully as if no contract with reference to the price of gas had been made at all.

"For these reasons, the motion will be overruled."

## REFERENCES

### PUBLIC SERVICE REGULATION

#### 252—Commission Annual Reports

Connecticut Public Utilities Commission, Eighth Annual Report, 1919. 811 pages.

The report contains statistics compiled from the financial reports of all public service companies under the jurisdiction of the Commission for the calendar

year, 1918, and a brief summary in tabulated form of the Commission's orders and decisions for the year ending September 30, 1919.

## 253—Commission Reports of Decisions

Missouri Public Service Commission, Reports of Decisions. Volume 7, December 3, 1918, to August 9, 1919, 785 pages.

Volume 7 of the Missouri Public Service Commission Reports contains the decisions handed down by the Commission during the period from December 3, 1918, to August 9, 1919.

## COURT DECISION REFERENCES

### 129.3—Refusal of Service

Hansen v. Vallejo Electric Light and Power Co. Decision of the Supreme Court of California. March 25, 1920. Rehearing Denied April 16, 1920. 188 Pacific 999.

Action was brought to recover from the Vallejo Electric Light and Power Company the sum of \$2,665 because of its failure to furnish to plaintiff electricity for use in his dwelling house in the city of Vallejo. Upon the close of the plaintiff's case, the Superior Court granted defendant's motion for a nonsuit, on the ground that the action was barred by the provisions of subdivision 1 of section 340, Code of Civil Procedure, and judgment was entered accordingly. This is an appeal from such judgment.

Section 629, Civil Code, which was in force at all times mentioned in the complaint and until repealed in 1915 (Stats. 1915, p. 169), provided substantially that a gas or electric light corporation must supply gas or electricity to any building or premises distant not more than 100 feet from any main or direct or primary wire of the corporation, "upon the application in writing of the owner or occupant," and payment of all money due from him. It further provided:

"If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas or electricity required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars per day as liquidated damages for every day such refusal or neglect continues thereafter."

The Court Says:

"We are satisfied that this provision must be held to impose a 'penalty' for noncompliance, notwithstanding the use of the words 'liquidated damages.' It has heretofore consistently been accepted by this court and the District Courts of Appeal as so doing, without, however, any question having been raised to the contrary. See *Capital Gas Co. v. Young*, 109 Cal. 140, 41 Pac. 869, 29 L. R. A. 463; *Baker v. San Francisco, etc., Co.*, 141 Cal. 710, 75 Pac. 342; *Thompson v. San Francisco, etc. Co.*, 18 Cal. App. 30, 121 Pac. 937; *Id.*, 20 Cal. App. 142, 128 Pac. 347; *Id.* 34 Cal. App. 699, 168 Pac. 390. We can see no doubt of the correctness of this view. Unquestionably it provides for a recovery for a wrong or injury suffered without any reference whatever to the question of actual damage. The recovery is had even though it be conceded that there was no actual damage whatever. Likewise the recovery is limited to the amount specified, even though in a particular case it could be shown beyond question what the actual damage was and that such actual damage exceeded the statutory amounts many times over and ran to a very large amount." \* \* \*

"It is claimed that section 629, Civil Code, was violative of section 11 of article 1 of our Constitution, which provides that 'all laws of a general nature shall have a uniform operation'; the theory being that it discriminated unlawfully between corporations furnishing gas or electric light and natural persons and copartnerships engaged in the same business. The section was one contained in the title of our Civil Code relative to corporations furnishing light for public use, title 15 of part 4 of division 1; part 4 of division 1 being the portion of the Civil Code devoted to the subject of corporations. In view of the subject-matter of this section, it really had no proper place in a part of the Civil Code devoted solely to corporations, but under the guidance of the Code commissioners to that place it found its way from the act of 1863 (St. 1863, p. 647), relative to gas companies and consumers of gas, when our Codes were framed in 1872, where it was when our Constitution of 1879 was adopted, and where, repealed and re-enacted with some changes to include electric light corporations, it remained until its final repeal in 1915. No good reason occurs to us why such an obligation should be imposed on corporations engaged in the business of supplying gas or electricity, with the penalty for default, that would not be equally applicable in the case of an individual or copartnership engaged in the same business. At the same time we do not feel warranted in holding it opposed to section 11 of article 1 of our Constitution. Of course, the well-settled rule is that the presumption is in favor of the validity of legislative action. And it is not to be assumed, for the purpose of nullifying the law, that there was any intention to discriminate against corporations engaged in this business to the advantage of natural persons or copartnerships engaged therein. *County of San Luis Obispo v. Murphy*, 162 Cal. 588, 591, 123 Pac. 808, Ann. Cas. 1913D, 712. We think it may fairly be said that it is a matter of common knowledge that the business referred to, that of supplying a community with gas or electricity for light, etc., is in this state practically always conducted by a corporation. Isolated cases of the conduct of such business by an individual, copartnership, or voluntary unincorporated association may exist in some small communities, but certainly they are extremely rare, and, as said on a somewhat similar objection in *County of San Luis Obispo v. Murphy*, *supra*, the Legislature may have reasonably concluded that they were so inappreciable and insignificant in number that the corporations composed 'the entire class' of persons actually engaged in such business. The Constitution itself assumes this to be a proper classification, for it is therein provided as follows:

"The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for and wharfage, in which there is a public use." Section 33, art. 4, Const.

"While, as suggested by learned counsel for defendant, this refers only to laws for the regulation and limitation of charges, a classification for that purpose must be based on the same principles as obtain with regard to such a provision as is here involved. In the face of this provision of the Constitution, which apparently was not brought to the attention of the District Court of Appeal in *Thompson v. San Francisco, etc., Co.*, 34 Cal. App. 699, 168 Pac. 390, considered in connection with the other matters to which we have referred, we do not see how it can properly be held that section 629, Civil Code, was violative of section 11, art. 1, of the same Constitution.

"As a part of plaintiff's demand was not barred by subdivision 1 of section 340, Code of Civil Procedure, the motion for a nonsuit should not have been granted. Plaintiff made a *prima facie* case for the recovery of the \$5 per diem penalties accruing within a year of the time of the commencement of the action.

"The judgment is reversed."



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# RATE RESEARCH



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## COMMISSION DECISIONS

### DISTRICT OF COLUMBIA

#### 300—Investment and Return

The Chesapeake and Potomac Telephone Company, Application For An Increase in Rates. Decision of the District of Columbia Public Utilities Commission, Fixing Rates. May 26, 1920.

Shortly after the property of the Chesapeake and Potomac Telephone Company was returned to its owners at the termination of the period of federal control during the late war, the company petitioned this Commission for a continuation of the then existing rates which had been put into effect on order of the Postmaster General. After a public hearing on November 3, 1919, the Commission issued order number 353 continuing the rates in effect until May 31, 1920. The telephone company at the time of the hearing in November represented that the schedule of rates established by the Postmaster General produced insufficient revenue to enable the company to earn a fair return upon the fair value of its property. But the officers of the company stated that at that time they were unable to make a reasonable estimate of what proportion of the capital expenditures, made in the last two years, should be allocated to the special requirements of the federal government in connection with war activities, nor did the company know what reimbursement the government would make for such extraordinary expenses.

On April 17, 1920, the Chesapeake and Potomac Telephone Company filed with this Commission a petition for an increase in rates. Formal public hearings were held on May 6th and 7th, 1920. Three treatments were presented to bring the fair value found by this Commission as of June 30, 1914 (order number 211, formal case number 57) down to December 3, 1919, the results being respectively, \$12,486,629.16, \$12,927,238.02 and \$12,659,265.98; these amounts being arrived at after allowing for a deduction of \$1,849,929.14 for property added between the above dates, but no longer used nor useful. These amounts, also, do not include property actually retired from use during the same period, the value of which is stated by the company to be \$2,109,532.26.

The Commission says:

## 310—Valuation.

"It is apparent that such a very great increase in the value of the company's property, practically doubling the amount of its pre-war investment, requires the most careful consideration by the Commission before a final determination of the fair value of the property of the company can be made. If the company were now asking for an increase in rates that would produce what in normal times might be regarded as a fair return upon the fair value of its property, it would be necessary for the Commission before taking action to make a more detailed investigation into the property of the company, but since the total revenues that would be produced by the proposed increase in rates, if allowed in full, would yield only 4¾% return upon the fair value as estimated by the company, and since the company has deducted from its accounts as property no longer used and useful the sum of \$1,849,929.14, the Commission feels that it will do no injustice to the public if it adopts a tentative base for determining rates for the ensuing eight months.

"A large portion of the \$1,849,929.14 deducted from capital accounts by the company for property not used nor useful on December 3, 1919, represents special equipment installed for the war activities of the United States Government. \* \* \*

"There are, however, two claims of the company for increased amounts in the fair value on which the rates are to be based, which the Commission cannot accept without revision; namely, materials and supplies and working cash.

"The Commission's finding of fair value as of June 30, 1914, was \$6,400,000.00, which included an allowance of \$34,800 for materials and supplies, the latter based on an actual inventory of the property in storerooms in the District of Columbia on that date. The company claims that this should be fixed now at \$241,800.00, an increase of 700 per cent, although the property has only doubled in that time, and, according to one of the witnesses, the increase in the cost of manufactured articles used by the company has been only 62.81 per cent. Allowing for these latter increases as well as for the greater delay now experienced in obtaining delivery of materials and the necessity of carrying larger stocks on hand, it would appear that the claim for \$241,800.00 for materials and supplies is excessive. The Commission is of the opinion that an allowance of \$150,000.00 is ample under the circumstances, particularly in view of the favorable agreement with the Western Electric Company, under which most of the supplies needed by the petitioner are furnished. \* \* \*

"Taking into consideration then the several suggested methods of arriving at a tentative rate base, the Commission believes that it should add to the amount of its fair value as of December 31, 1916,

the amount actually expended by the company since that time, less the retirements and the value of the property admitted by the company to be no longer used and useful, and that it should increase the allowances for materials and supplies and working capital in the manner indicated above. This, with a further deduction for the increase in capital paid for out of earnings, will produce a total of approximately \$12,500,000.00, which amount the Commission will adopt for the purposes of this rate case as the tentative fair value of the property of the Chesapeake and Potomac Telephone Company in the District of Columbia used and useful for telephone operations. It is clearly to be understood that in adopting this tentative rate base the Commission does not at this time determine the sufficiency of the eliminations made by the company on account of property that was devoted solely to the use of the federal government during the war, nor does it determine what effect upon a final valuation should be given to the matter of depreciation. It merely establishes a tentative fair value which it believes to be reasonable and just alike to the company and to the public pending further and more detailed investigations."

(To be continued in next week's issue of Rate Research)

## **NEW JERSEY**

### **630—Cost of Supplies**

Elizabethtown Gas Light Company, Cranford Gas Light Company, Metuchen Gas Light Company and Rahway Gas Light Company, Applications for Authority to Increase Rates. Decision of the New Jersey Board of Public Utility Commissioners, Granting an Increase. May 12, 1920.

The principal reasons set forth by each company for filing a schedule of increased rates are as follows: that the gross revenue from the present rates has been and is continuing to be insufficient; costs of labor, material, supplies, including taxes and financing, have increased continuously during the past, and are continuing to increase; current interest rates and the cost of obtaining money for capital investment have increased and are continuing to increase; the purchasing power of the revenue derived from the present rates has depreciated and is continuing to depreciate owing to the depreciation of the standard of exchange.

The testimony in the present case and all of the exhibits offered in support of the petition treat the revenues and expenses of the combined companies as a whole. The Elizabethtown Gas Light Company owns and controls the subsidiary companies. The rates now in effect are the same throughout the territory served by the applicant companies.

The Commission says:

"Were the formality of a merger of these companies observed, no question would arise as to the establishment of a uniform schedule

of rates throughout the territory served. The policy of adopting a uniform rate was established by this Board in the Passaic Gas Case, wherein the Board recommended the extension of the rate fixed as just and reasonable in the Passaic Division over the entire territory served by the Public Service Gas Company. The Board will therefore treat the company as a single entity."

### 310—Valuation.

Regarding the fair value of the property devoted to public use, the Commission says:

"The principal elements to be considered by a regulatory body in this connection were laid down in *Smythe vs. Ames* (18 Sup. Ct. 418), as follows:

"The basis of all calculations as to the reasonableness of rates must be the fair value of the property used by the company for the convenience of the public. In ascertaining the value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case.'

"In his argument and brief, the counsel for the petitioners lays more emphasis on the reproduction cost with normal unit prices increased by twenty-five per cent, to cover conditions resulting from the world war, which in his expert's opinion, represents the permanent increase in value of the property of the utility devoted to the public use.

"The municipalities, on the other hand, inclined more to a consideration of the values derived upon a basis of pre-war costs only and have specially stressed book costs.

"The Board takes the reasonable middle ground which, it thinks, conserves the interest of the company and customers. Such has been its practice in a large majority of cases decided by it during the period of and since the termination of hostilities in the recent world war. Its position in this matter cannot be better set forth than by quoting the language of the Supreme Court of the District of Columbia, in the matter of the *Potomac Electric Power Company vs. Public Utilities Commission of the District of Columbia*, reviewing the findings of the Commission as to the value of the company's property, March 2, 1920. (Reported in 17 Rate Research 27-32.) \* \* \*

"In the Board's opinion, the fair value now of the property of the company may best be ascertained by applying to the inventory of the property in existence on December 31, 1915, unit costs prevailing

for a period of five or more years prior to December 31, 1915, and adding thereto the net additions on the basis of book costs for the period from January 1, 1916, to the date of the valuation. In this way the public will be protected against undue inflation and the company will receive the benefit of actual increased burden imposed upon it by conditions created by the world war. \* \* \*

#### 360—Depreciation.

"The Board is of the opinion that it will be fair to deduct accrued depreciation in the amount set aside by the Elizabethtown Gas Light Company and its subsidiaries pursuant to rules laid down by the Board's Uniform System of Accounts effective January 1, 1913. As of December 31, 1919, this amount of \$171,604 to which is added an estimated amount of \$16,000 to bring the amount of the reserve down to the present of June 30, 1920.

"From a full consideration of all data submitted, the Board finds the value of the property of the petitioner as of December 31, 1919, to be \$3,290,475. To this should be added an estimated increase in capital of \$85,000 during the first half of 1920, less increase in depreciation reserve, which will make the fair value of the property as of June 30, 1920, \$3,359,475. This may be taken as \$3,360,000 as a basis for rates."

#### 510—Forms of Rates.

"The form of the rate applied for by the company is decidedly objectionable and inequitable, it being based on the so-called step system of rates. The inequity may be clearly revealed by reference to the schedule of rates set forth more fully hereinbefore. Under the proposed schedule of the company, if a customer should use 499,900 cubic feet of gas at \$1.25 per thousand, his bill would be \$624.88. If he should use, however, 500,000 cubic feet at the rate of \$1.20, his bill would be \$600, so that by wasting 100 cubic feet of gas the customer's bill could be reduced in the amount of \$24.88. The fact that such a rate is inequitable and discriminatory appears from this example.

"The counsel for the four petitioners in this matter asked that the testimony be taken as if the companies constituted a single entity. The ownership of the four companies is vested almost entirely in the Elizabethtown Gas Light Company, which company, therefore, directly controls its three subsidiaries. The Board considers it highly desirable, therefore, that these companies should merge and become one in form as well as in fact. The testimony offered on behalf of the Elizabethtown Gas Light Company to the effect that such a merger would not result in economy does not appear to the Board to be based on sound principles, as it is contrary to the usual experience in such cases. The officers in three out of four of the companies are now practically the same, and the fact that the companies were merged should make a difference with respect

to franchise taxes, the making of annual reports and other duplications of effort now necessary by reason of the separate entities now existing."

#### **720—Rate Schedule.**

The Commission authorized the petitioners to file a new schedule of net rates, effective June 1, 1920.

#### **Rate.**

\$1.15 per 1,000 cubic feet for the first 100,000 cubic feet consumed per month.  
95 cents per 1,000 cubic feet for the next 100,000 cubic feet consumed per month.  
90 cents per 1,000 cubic feet for the next 100,000 cubic feet consumed per month.  
85 cents per 1,000 cubic feet for the next 200,000 cubic feet consumed per month.  
80 cents per 1,000 cubic feet for all excess use.

#### **Minimum Charge.**

50 cents per month.

Commissioner Gaul, in a concurring report, says:

"Anything which interferes with the attraction of capital to a public utility handicaps the development of the territory served. That to increase rates enough to attract capital will increase the cost of living is, in a measure, true, but the refusal to grant sufficient rates is 'penny wise pound foolish,' and inadequate service will result, which, through indirect costs, will increase the cost of living many times the increase necessary to attract capital.

"Discriminating against the utilities by limiting their net earnings to half or less than half of the purchasing power of their pre-war net return will prevent them from obtaining capital in competition with other industries whose earnings are not so limited.

"It would be difficult to convince a wage earner who is receiving as wages today the same number of dollars he did before the war that he is receiving a fair wage. If a utility earns the same number of dollars net return as before the war, it would take more than plausible argument to convince the investor that he is not bearing a burden in the reduced purchasing power of his return. Capital, like labor, is now demanding more dollars as wages than in pre-war times, and the investor also requires that business show a greater percentage of net return to assure payment of interest and dividends.

"In wages paid to either labor or capital the value of the dollar lies in its exchange or purchasing power, or, in other words, its power to render service. People are paying more dollars today for labor performed. This means that the dollar is rendering less service. People are paying a greater rate of return today for the use of a dollar which will render half or less than half the service of the pre-



war dollar. Therefore, if one is to be fair enough to pay for service rendered, he must surely allow a greater return to the pre-war interested dollar than to the present day invested dollar. All competitive business recognizes this difference in service rendered and allows for it in the selling price of the product. Those utilities which have not been permitted to do likewise have found it almost impossible to raise capital.

"To attract new capital to a utility it is, in my opinion, essential that the purchasing power of the present return should be commensurate with the purchasing power of the fair return which attracted capital to the utility originally."

### **MONTANA**

#### **630—Cost of Supplies**

Application of the City Garage and Light Plant, Culbertson, Montana, For Authority to Increase Electric Rates. Decision of the Montana Public Service Commission, Granting an Increase. May 26, 1920.

On February 4, 1920, the utility filed an amended schedule requesting authority to advance the rates under its present schedule as follows: 4 cents per kilowatt hour for General lighting; 3 cents per kilowatt hour for Municipal Street lighting; 2 cents per kilowatt hour for Power and 2 cents per kilowatt hour for Heating and Cooking Service. It was alleged that material increases in the price of fuel, oil, and wages, then existing and further rises in prospect, made relief by way of higher rates imperative.

After making a valuation of the utility's property devoted to public service, the Commission says:

#### **340—Rate of Return.**

"The net return of \$419.06 falls short of a reasonable return on the investment by \$227.46. Were the service reduced to ten hours per day, with special arrangements to meet the requirements of housewives on Mondays and Tuesdays, a material reduction in operating expenses would be obtained with but slight reduction in revenues. The management, however, does not desire to abandon the twenty-four hour service, entertaining the conviction that it can be built up to the point where it is remunerative. This Commission is loath to order the discontinuance of a service when such act would seriously inconvenience patrons and make an end to any prospect of growth for such service."

#### **650—Discrimination.**

The manager testified that electric energy was furnished free to his residence and to the City Garage. The Commission says:

"This practice is a direct violation of Section 12 of the Public Ser-

vice Commission Act and must be discontinued at once. All energy furnished the private residence of the manager, or the garage, must be metered and paid for at regular rates.

"We find that the City Garage and Light Plant of Culbertson, Montana, is not, under its present schedule and notwithstanding economical management, earning sufficient revenues to defray operating expenses, taxes and depreciation, and that a general rate increase is necessary to meet said minimum requirements. We propose to authorize a rate schedule increase sufficient to meet operating expenses on a twenty-four hour service basis plus a fraction of the utility's fair return. If the owner is willing to bear the loss of a fair return on his investment in order to attempt the establishment of remunerative twenty-four hour service, we shall not interfere with the project at this time."

The Commission authorized the City Garage and Light Plant of Culbertson, Montana, to put into effect a schedule of increased rates on June 1, 1920.

## NEW JERSEY

### 630—Cost of Supplies

The Perth Amboy Gas Light Company, Application For Authority to Increase its Rates. Decision of the New Jersey Board of Public Utility Commissioners, Granting an Increase. May 12, 1920.

The Perth Amboy Gas Light Company filed an application for authority to increase its rates.

It was agreed that the hearings in this case should be dependent upon and follow the hearings of the petitions of the Elizabethtown Gas Light Company and its subsidiaries for the reason that about two-thirds of the gas sold by the petitioner is purchased from the Elizabethtown Gas Light Company.

The Commission says:

"The costs of labor, fuel and other material used by the applicant company have an upward trend and the company has failed to earn a fair return from the date the proposed rates were to become effective down to the present time.

"The net base rate of the petitioner is ninety cents per thousand cubic feet. This has been in effect since March, 1913. At that time that rate was fixed by this Board as just and reasonable rate for the Passaic Division of Public Service Gas Company. The Board recommended that the said company extend the rate fixed for the Passaic Division to the rest of the territory supplied by it. That company accepted the recommendation. At the same time the petitioner company as well as the Elizabethtown Gas Light Company and its subsidiaries reduced their then existing rates to the same

net base rate. By its report of even date herewith the Board has permitted the Elizabethtown Gas Light Company and its subsidiaries to file a schedule of rates based on a net rate of \$1.15 per thousand cubic feet. Previously the Board permitted the Public Service Gas Company to file the same net base rate. While the calculations in the present proceeding if given exclusive consideration would indicate that \$1.17 per thousand cubic feet as a net base rate would not be unreasonable, the Board does not feel justified in fixing this as the base rate.

"An increase to the people of Perth Amboy, even though slightly in excess of that of the people of adjacent municipalities, all of whom were previously supplied at the same rate for a long period of time, would be resented to a degree which might seriously affect the revenues expected to be derived from the rate fixed. An increase equal in amount to that allowed in adjacent communities would obviate this. The Board therefore finds and fixes as a just and reasonable rate \$1.15 per thousand.

"The minimum bill of fifty cents for 500 cubic feet results in a rate of \$1.00 per thousand cubic feet for such customers as may use exactly 500 cubic feet—a lower rate than proposed for customers using more gas. This is inequitable and will not be approved."

## WISCONSIN

### 300—Investment and Return

City of Milwaukee v. Railroad Commission of Wisconsin and the Milwaukee Electric Railway and Light Company, Complaint Against Increase in Rates. Opinion, Order and Return of the Railroad Commission of Wisconsin to the Wisconsin Circuit Court of Dane County. January 5, 1920. (Continued From 17 Rate Research 147-155.)

"Although the fair value of the property was fixed in the October 30, 1919, decision by taking the reproduction cost new of the valuation of 1914 as fairly representing fair value at that time, not all of the earnings which are received by the company on this fair value can be distributed to the security and stockholders of the company. Interest at the rate of  $3\frac{1}{2}\%$  on several million dollars representing the depreciation reserves is to be deducted from the income and credited to the reserves. This permits the fixing of the annual depreciation allowance to be charged to operating expenses on a funded basis considerably lower than would be the allowance were it not for these interest credits. This in turn results in a more favorable rate structure for the patrons of the company.

"Other elements which must be taken into consideration are such as materials and supplies on hand and the question of working capital. For the reasons stated in the decision of this case reported

in 21 W. R. C. R. 1, we found no reason for making a special allowance for working capital, although an allowance for materials and supplies is necessary.

"We have adverted to the fact that fair value for ratemaking purposes may not necessarily be synonymous with what is known among economists as 'exchange value.' In the recent Illinois decision, already referred to, the Supreme Court of Illinois referred to this fact and said that exchange value should not have much weight. 'Exchange value is in the case of a property whose function is simply to earn money determined primarily by the earning power, and the more unjust and unreasonable the charge made by the utility, the higher the exchange value.' \* \* \*

"There was before us at the time of the decisions in question, including the decision of October 30, 1919, the results of a pretty comprehensive study of all possible elements to be considered in arriving at what was a just and fair value for ratemaking purposes. We had earlier appraisals and reproduction costs of the property at the time of the appraisals, a far more complete and thorough inventory and fair appraisal of property as of January 1, 1914, including reproduction cost new and reproduction cost new less accrued depreciation. We had before us in the evidence proof of the fact that reproduction costs of the same identical property either in 1918 or 1919 using war prices or even 5-year averages would give a valuation millions in excess of a fair value arrived at by using the 1914 valuation with additions to property, and we have before us the additional fact that reproduction cost on prevailing unit prices would nearly double the value if taken for the purposes of arriving at fair value. We had before us the fact that the depreciation reserves practically equal the accrued depreciation, that these reserves are calculated and allowed to be set aside on a sinking fund basis and that interest charges must be credited to the depreciation reserves from the earnings on the fair value. We have before us various investigations of what might be called investment in the property upon which we have given our conclusions. The city sets forth its reasons for believing that a somewhat lower investment cost represents the proper investment figure, and this has also been given consideration. Going value must be taken into consideration and all the elements considered in finally arriving at the fair value to be used for this ratemaking purpose. After looking at the matter broadly from every standpoint, taking into consideration all the elements involved, it was our conclusion that fair value of the property on January 1, 1914, was represented by the engineers estimate of reproduction cost new, and that if this figure were taken no further allowance should be made for going value nor for working capital, but that consideration should be given to materials and supplies on hand; that using this as a base the fair value for ratemaking purposes could be arrived at by including additions to property since January 1, 1914. This was

our judgment in making the decisions of June 1, 1918, April 4, 1919, and our recent decision of October 30, 1919. We have again reconsidered the entire matter from every angle, and we are satisfied that our judgment as to what fairly and equitably represented fair value of the railway property for ratemaking purposes was correct and fair both to the public and the company."

### 360—Depreciation.

"On questions of depreciation and depreciation reserve, which are elements which must also be considered, considerable discussion will be found in our decision in this case 21 W. R. C. R. I. The Alabama Public Service Commission in the case of Birmingham vs. Southern Bell Tel. Co., P. U. R. 1919, B. 791 said:

" 'In connection with the depreciation reserve it is proper for this Commission to bear in mind that no possible benefit can accrue to the public through the establishment of an inadequate percentage for a depreciation reserve. The ability of a public utility to promptly substitute efficient and approved apparatus for that which is worn out is inadequate, and therefore its ability to give service and ultimately even its solvency are dependent on adequate depreciation reserves.'

"The position of this Commission on this question was taken at an early date in the history of the Commission. In the case, State Journal Printing Co. vs. Madison Gas & Electric Co., 4 W. R. C. R. 501, 599, et seq., the necessity and reasons for such depreciation reserves are fully set out. When such reserves are set aside they may be either invested in interest-bearing securities or, as said in the case of Springfield vs. Springfield Gas and Elec. Co., decided by the Illinois Public Utilities Commission, P. U. R. 1916, C. 281:

" 'A large portion of the accumulated depreciation reserve either could be invested safely in readily marketable bonds or could be reinvested to great advantage in extensions and betterments of existing property.'

"This has always been the ruling of the Wisconsin Commission on this subject.

"In arriving at the valuation used in the case of 10 W. R. C. R., the Commission expressly found that the difference between the cost new and the present value or the depreciation that had taken place in the property was to the extent of \$1,839,000 offset by a depreciation fund which is partly covered by securities and partly by property and which goes with the property and plant. The value finally fixed in that decision, 10 W. R. C. R. 159, of \$10,300,000, as of January 1, 1910, is greater than the reproduction cost new, as estimated by the engineers at that time.

"In the case of Bonbright vs. Corp. Commission, 210 Fed. Rep. 44, the court held that where the depreciation fund had been set aside

and withheld from the stockholders, the Commission was in error in omitting this reserve fund from its valuation of the plant.

"Our own Supreme Court in *Duluth St. Ry. Co. v. Railroad Commission*, 161 Wis. 245, approved the position taken by the Commission in including the depreciation reserve of \$95,000 and the working capital in arriving at fair value of the street railway property.

"It has always been the practice of the Commission in arriving at fair value to take into consideration the question of depreciation reserves, as well as other elements such as going value, working capital, materials and supplies, etc. A study of many of these cases will show the fair value arrived at has been the same or about the same as the reproduction cost new. Such cases are *Hill vs. Antigo Water Company*, 3 W. R. C. R. 623; *State Journal Printing Company vs. Madison Gas & Electric Company*, 4 W. R. C. R. 501; *In re Fond du Lac Water Co.*, 5 W. R. C. R. 482; *Racine vs. Racine Gas Light Co.*, 6 W. R. C. R. 228; *Beloit Rate Case*, 7 W. R. C. R. 187; *Oconto City Water Co.*, 7 W. R. C. R. 497; *Janesville vs. Janesville Water Co.*, 7 W. R. C. R. 628; *Marinette vs. Water Co.*, 8 W. R. C. R. 334; *Bogart vs. Wisconsin Telephone Co.*, 17 W. R. C. R. 524. In several of these cases the fair value exceeds quite considerably the reproduction cost new. \* \* \*

"The plaintiff's contention that inasmuch as the fair value of the property from 1910 to 1918 has been equal to the historical cost and to the cost of reproduction new, no depreciation reserve was required during this period. Therefore, the city deducts the balance in the company's depreciation reserve from the valuation for computing return as previously used by it in exhibit 7, computing the 7½ per cent return on the remaining amount. This results in materially increasing the city's estimate of excess earnings, and these claimed excess earnings are still further increased in some of the city's exhibits by the addition of interest computed upon the excess earnings claimed from year to year. Details of these computations will be found in Exhibits 9 and 10. This contention results from a failure properly to distinguish between the fair value of a property and a physical reproduction valuation new less accrued depreciation. Both the rate of return and the allowance for depreciation as fixed by the Commission have been made upon the basis that taking all elements into consideration the cost new of the property fairly represented its value and that the return should be computed upon this cost new and that the fair value of the property for rate-making purposes is not the depreciated value. The rate of return fixed by the Commission recognized the fact that the company will be able to invest a considerable portion of its depreciation reserve capital in permanent additions and improvements and therefore that the rate of return required by the company on the fair value, which is in this case the cost new, need not be so high as would be the

case were the funds for the construction of this property derived entirely from outside sources. By computing the allowance for depreciation upon a sinking fund basis, the Commission deducted from the charge to operating expenses for depreciation an amount equal to the return allowed by the Commission upon the depreciation reserve capital invested in the property of the company over the period for which the reserve is provided. In other words, over such a period the depreciation allowance included in the operating expenses which are to be deducted from the company's revenues in arriving at the amount available for return is reduced by an amount equal to the return which the Commission allows the company to earn upon the depreciation reserve capital invested in the property and plant of the company, so that the earnings the company can take from the business for the benefit of the stockholders are not earnings upon the full cost new.

"In its order of October 30, 1919, the Commission prescribed that the company shall compute interest at the rate of not less than  $3\frac{1}{2}\%$  per annum upon the balance in its depreciation reserve accounts, shall credit this interest monthly to the depreciation reserves and shall treat these interest charges as deductions from gross income, which means that these interest charges are not to be considered as part of the expenses of the company before arriving at the income available for return. In other words, this interest on depreciation reserves is not an operating expense, but must be deducted from income before the payment of dividends. It is clear, therefore, that plaintiff was not justified in deducting the per books balances in the railway depreciation reserve from the valuation of the property in order to determine the valuation to be used in computing the return. It would seem to be perfectly clear that it would be inequitable to require the company to reduce the amount which it may charge to operating expenses for depreciation by the amount of interest on depreciation reserves and at the same time deduct these depreciation reserves from the amount upon which the company is allowed to earn.

"It has already been shown that the operations of the Milwaukee street railway from January 1, 1913, to July 31, 1919, yielded less than the  $7\frac{1}{2}\%$  return computed by adding book additions to the railway value as of January 1, 1910. It is very clear that in this case cost new and not depreciated value fairly represents the value of the property for ratemaking purposes. \* \* \*

"Plaintiff contends in this connection that the Commission has erred in fixing the allowance for depreciation upon a study of estimated lives of the physical property as made by the engineers, that rather a combined allowance should be made for maintenance and depreciation and that this allowance should be based upon average costs of maintenance and losses realized on property actually retired from service over a period of years. The fundamental error in connec-

tion with this contention on the part of plaintiff is that it amounts to the denial of the self-evident fact that in the case of a growing property the depreciation actually accrued on the property must necessarily increase from year to year. In the case of the Milwaukee street railway property, the accrued depreciation as of January 1, 1897, was found to be \$998,408, whereas on June 30, 1919, it was approximately \$4,125,798. The theory adopted by the plaintiff for the determination of maintenance and depreciation overlooks this fundamental fact and attempts to build up an allowance for maintenance and depreciation based wholly upon actual maintenance in the past and actual amounts charged to depreciation reserve for property actually retired from service in the period under investigation. Assuming that a valid test could be made along this line, at least two other factors would have to be taken into consideration, namely, the actual accrued depreciation at the commencement of the period and the accrued depreciation on property still in service at the close of the period. We are satisfied that the plan followed by the Commission in determining proper allowances for maintenance and depreciation for the Milwaukee city railway represents the most accurate method of computing maintenance and depreciation costs."

## REFERENCES

### GENERAL

#### 900—General

Electric Utility Securities Compare with Industrials in Permanence of Value. *Electrical World*. May 29, 1920. p. 1278, ½ page.

In an interim report to the Investment Bankers' Association of America by the committee on public service securities, of which O. B. Willcox, of Bonbright and Company, is chairman, a review is made of the effects of war-forced economy on the public utilities, the cost of generating energy, the increased use of electricity, electrification of the railroads, and the present financial status of electric central stations.

The report concludes:

"As the pressure of the high costs of operation, with resulting decrease in earnings, disturbed confidence in public utility securities, so the response made by regulating authorities in approving rate increases should tend to restore that confidence, strengthened by proof accumulated through the war period that the public and the regulating commission recognize that the power and light companies are an essential part of our industrial fabric and are entitled to fair rates for their service and a fair return.

"With improving earnings and with full appreciation of the economic and financial history of these companies during and since the war period, their credit should steadily improve and their requirements for money with which to meet maturing obligations and to expand their facilities to take on business offered should again be satisfied through investment markets (subject, of course, to general financial conditions) at gradually decreasing costs for money; and it may also be expected that the general price level of the outstanding securities of companies which have creditably survived the disorders of the past few years will substantially improve."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### OREGON

#### 600—Rate Differentials

Eastern Oregon Light and Power Company. Application for Authority to Revise Its Power Rates. Decision of the Oregon Public Service Commission, Fixing Rates. May 19, 1920.

The Eastern Oregon Light and Power Company applied for permission to establish certain increased power rates and to discontinue prompt payment discount on bills for electric lighting.

The Commission, by its order issued on July 22, 1915, the value of the electric property of this utility actually used and useful in the service of the public, as of June 30, 1914, was found to be \$1,020,300. By the same order certain electric rates for residence and commercial lighting were prescribed. The rates so fixed were subject to a prompt payment discount of ten per cent if paid within ten days after the date of billing. The power rates of the company were not then in issue. Rates for power have been established by the utility from time to time to meet particular situations as they arose, upon a basis designed to encourage this class of service. As a consequence these various power schedules are not equitably arranged and inequalities and inequities exist.

The applicant herein now seeks permission to initiate a new schedule of power rates designed to remove these inequalities and discriminatory conditions and at the same time provide additional revenue.

In its petition the Company advances the contention that since the former order of this Commission it has had to meet extraordinary and unusual increases in the cost of material and labor, that it has suffered losses by fire, floods and depreciation securities, and that it is now unable to earn a fair return upon the value of its utility property as found by the Commission. It is also alleged that additional plant development is necessary if it is to continue to properly serve the communities occupied by it, but that the financial condition of the Com-

pany is such as to make it extremely difficult, if not impossible, under the present rates and conditions, for it to obtain the necessary capital with which to make such necessary development.

#### 630—Cost of Supplies

"This Commission is quite familiar with the increased costs of labor and material which have existed during the past few years, and the resultant depressing effect upon the income of this and other companies. This will be considered in connection with the application here presented. Losses by fire and floods constitute extraordinary depreciation and may properly be considered as an item of expense when placed in suspense and distributed over a period of years. The entire amounts thereof may not, however, be treated as operating expenses properly chargeable to the particular year in which they occur. In our opinion the period over which such items may properly be distributed should not be less than five years. While depreciation of securities may, in proper instances, be given consideration in connection with the fixing of a fair return, this element does not carry much weight in cases where such depreciation may have resulted largely or wholly from over-bonding.

"Concerning the applicant's plea of financial difficulty, we must say that in our opinion the poor credit of a utility, *per se*, cannot logically be advanced as an argument for increased rates. While this feature may properly be given serious consideration when shown to have resulted from unreasonably low rates, yet it is entitled to little weight traceable to the financial policy of the utility.

"The record plainly shows that the present condition of the applicant's credit is due in a great measure to its large bonded indebtedness and its attempt to reduce this debt and thus stabilize its financial condition out of net income. Clearly the remedy for this situation lies with the stock and bond holders and cannot justly be charged to the rate payer."

#### 350—Total Revenue, Expense, Income

The Company submitted a table showing the revenues, expenses and resulting operating income, with the method of its derivation, for each year since June 30, 1914. The Commission says:

"It will be noted in this statement that although the operating revenues have been increasing, operating expenses and taxes have been increasing more rapidly, with the result that the operating income has been diminishing. The opposite result should be the normal condition to be expected, as there has been no marked increase in fixed capital costs for increased power plant capacity in the meantime. "Based upon the foregoing income statement and the present valuation, if conditions were the same the Commission might be inclined to dismiss the application of the utility, or to permit very little net increase in the proposed readjustment of power revenue from the

rates. However, since 1915, the increasing revenue from increasing demand should have been accompanied by an increase in power plant investment. Had this increased plant been heretofore provided, as must be done in the very immediate future, the depreciation and return on this increased plant capacity would have caused the effect of the increased operating expenses to be more marked. The showing of this utility would, in consequence, be much less favorable than is indicated by the foregoing income statement. With a normal plant development, the increased operating expenses, especially if proper maintenance be provided, justifies an increase in revenue, which must largely result from an increase in rates, although a part will be contributed by an increase in the volume of business."

#### 612—Power

"As heretofore stated, at the time of our previous investigation into the affairs of this utility the power rates were not then considered by the Commission.

"The existing power rates of this utility are without doubt the best example in Oregon of conditions existing prior to public utility regulation. Although there was, and is, a general industrial power rate (Schedule G) in effect, the form of this rate was not such as to adapt it to universal and equitable application. As a consequence, other power rates (Schedule H to L, inclusive) were later established to fit conditions to which the general power rate did not seem to be adapted. As a result, practically all of these later power rates were concessions to the power users, and are found in consequence to be more or less unjustly discriminatory when compared to the general power schedule. \* \* \*

"This Commission has worked out a form for a single power rate schedule which has been found to be applicable to practically all power uses. It is so designed that the long hour or continuous power user automatically obtains an average rate per kilowatt-hour which is properly applicable to the conditions under which he is operating. A rate form which will accomplish this result necessarily is more complex than the simple and inadequate rate forms previously applied for the purpose of assessing the fixed costs of the plant necessary for the customers' service. If the customers' use of this plant is exercised for only a short period, he pays for such use only for such period, but at a justifiably higher rate. The consumer who having paid for the fixed charges in the primary rate, which applies to practically two hours' use per day of his largest use, then obtains the remainder of his energy at the lower secondary rate. Large consumers obtain, in both primary and secondary rates, consideration for the decreased cost of supplying power in large quantities.

"The rate hereinafter prescribed will cause but little change, for the average general power customer, being now served under Schedule

G, except that those with long hour use would obtain a lesser average rate per kilowatt-hour, while those requiring the same investment in their service but using for a shorter period than the average may pay a correspondingly increased rate, the natural effect in this class being a slight reduction.

"As applied to the former power customers on Schedules H to L, inclusive, other than general power, the rate proposed by the utility would provide such an increase that it not only would eliminate the previous discrimination in favor of these customers, but would apparently cause a discrimination against them.

"The rates hereinafter set out place these customers upon a non-discriminatory basis as compared with the general power customer, although it has been necessary to increase such rates in order to bring about this condition.

"This utility has heretofore had no well-defined policy with reference to irrigation rates. Large irrigation customers were on special contracts, and evidently smaller customers were taken on at the regular power rate with apparently inadequate provision for a seasonal guarantee. As far as the power plant and general transmission systems are concerned, irrigation service is ordinarily considered as a by-product of general electric utility service. This is especially true so long as the demands for irrigation service do not require, during the irrigation season, plant capacity in excess of that required by general service during the winter months.

"Power for irrigation service is, as a general proposition, in competition with gravity irrigation, and the return derived from power-irrigated lands will not justify the burden of a rate as high as that necessary for general service. The obtaining of an irrigation load at the proposed irrigation rate will, however, increase the company's revenue in a greater proportion than the increased cost of such service, and, consequently, the consumers of electric service as a whole are benefited by this lower irrigation rate. A seasonal minimum charge must be provided in order to insure an income on special extensions for irrigation service.

"The power factor clause, temporary service rate, the reduction of minimum charge and Service Rules I and II should be approved.

"The petition of the applicant to discontinue *in toto* the prompt payment discount of 10% is denied. However, by reducing the said discount from 10% to 5%, the small increase in net revenue will obviate the necessity for further increase in general lighting rates and at the same time insure prompt payment of bills.

"The record herein is replete with testimony to the effect that power use among the patrons of the applicant has been greatly curtailed and in many instances entirely discontinued because of the inability of the utility to supply the demand. This has resulted in a great

hardship to numerous industries, particularly the mining industry. It is imperative that sufficient additional power be supplied to care for the needs of the community, and the Commission urges that no time be lost in supplying this deficiency.

**381—Taxation—City**

"While not directly involved in the application in this case, it has been brought to our attention that since the issuance of the former order of this Commission fixing rates for residence and commercial lighting for the cities of Baker and La Grande, and the various other communities served, the City of Baker has imposed upon the utility a franchise tax whereby there is paid to such city three per cent of the gross revenue of the company from its operations within the City of Baker. This naturally has the effect of making the operating expenses in Baker higher than those in La Grande, or any of the other districts served. Such a tax was not contemplated by the Commission when the present lighting rates were fixed, and the effect thereof is to throw an unjust burden upon all other communities served by the company.

"In order to remove this discrimination which now exists, it is necessary either that this franchise tax be removed, or that the Baker rates be increased sufficiently to compensate the company for the extra cost."

**DISTRICT OF COLUMBIA****300—Investment and Return**

The Chesapeake and Potomac Telephone Company, Application For An Increase in Rates. Decision of the District of Columbia Public Utilities Commission, Fixing Rates. May 26, 1920. (Continued from 17 Rate Research 163-165.)

**380—Taxation.**

Another item of expense is that of the licensee revenue, which on an annual basis under the proposed rates amounts to \$199,789.00. This licensee revenue is the amount paid by the Chesapeake and Potomac Telephone Company to the American Telephone and Telegraph Company under an agreement by which the local company pays to the American company  $4\frac{1}{2}\%$  of its total gross earnings.

The American Telephone and Telegraph Company owns the receivers, transmitters and induction coils and furnishes these instruments to the local company, maintains them, and replaces them, and in addition thereto performs certain other services of value, and the petitioner maintains that the amount paid,  $4\frac{1}{2}\%$  of its gross revenues, is a fair measure of the value of the services rendered.

This charge represents an expense of \$2.42 per telephone per annum in the District of Columbia. Of this \$1.13 may reasonably be taken as an

actual rental charge based upon the value of the instruments owned by the parent company, used by the local company, and excluded from the inventory and valuation of the local company. The balance of \$1.29 per telephone or a little more than ten cents per month is the amount that the telephone user pays to the American Telephone and Telegraph Company for its supervisory and expert services.

The Commission says:

"All of the stock of the Chesapeake and Potomac Telephone Company is owned by the New York Telephone Company and in turn all of the stock of the New York Telephone Company is owned by the American Telephone and Telegraph Company. The  $4\frac{1}{2}\%$  licensee agreement obtains as between the American Telephone and Telegraph Company and all of the subsidiary so-called Bell Companies in the United States, and in addition thereto there is a similar agreement with one or two telephone companies not owned by the American Telephone and Telegraph Company. The question of the reasonableness of this charge has been discussed in more or less detail by many utility commissions throughout the country. In a few cases it has been held that the charge is reasonable and the method of determining it, just. In one or two instances the whole item has been disallowed. Several commissions, notably those that have examined into the question in great detail, hold that the American Telephone and Telegraph Company is entitled of course to a fair rental charge for the instruments it leases to the subsidiary companies, and that it is also entitled to compensation for the other services it renders in making available to the local company, wherever situated, the services of its engineering staff, its research laboratories, and its accounting experts. Undeniably the people of the country as a whole have been well served by a system which has made available to every telephone corporation, however small, all of the results of the studies carried on by a highly organized and extremely competent staff of experts. So also has the country benefited by the uniform standardization which perhaps could not have been effected in any other way except by the simultaneous development of the telephone field throughout the United States by a single company, which, of course, was never possible politically or financially at any time. It is just and reasonable that this service should be compensated for by the telephone users, but to acknowledge the obligation and the necessity of recompense does not necessarily imply approval of the method of measuring the compensation to be paid.

"This Commission endorses the suggestion made by the Indiana Public Service Commission in its opinion of February 9, 1920, in the Central Indiana Telephone Company case, that the whole question of the  $4\frac{1}{2}\%$  charge be submitted to a joint study of the American Telephone Company and the National Association of Railway



Utilities Commissioners acting for the various commissions of the country, in order that a solution of this problem may be worked out that can be accepted throughout the country. In this case this Commission will not disallow the item of expense, although withholding its approval from the method of determining it, since the American Telephone and Telegraph Company within the past three years has paid to the Chesapeake and Potomac Telephone Company \$1,200,000.00 by way of assisting it to meet its extraordinary war-time obligations, and this sum alone represents the licensee income from this local company for a period of six or eight years.

"This Commission will reserve its final determination on this much-discussed subject until it has had the time and opportunity to fix the valuation of the property of the company by a more detailed study and also to determine and fix a method of calculating depreciation charges."

#### 340—Rate of Return.

"The net earnings of the company on an annual basis under the present rates are a little more than \$150,000.00, or about  $1\frac{1}{4}\%$  upon the tentative fair value as taken in this case. The estimated increase in revenues to be produced by the new schedule of rates proposed by the company in its petition, amounts approximately to \$550,000.00, making a total net revenue of about \$700,000.00, which must be reduced by increased expenses of approximately \$100,000.00 arising from increased taxes and licensee revenue proceedings from the increased gross receipts, leaving a resultant net revenue of about \$600,000.00, representing a return of approximately  $4\frac{3}{4}\%$  upon the fair value of the property. The margin between a  $4\frac{3}{4}\%$  return and what would be deemed a fair return under normal conditions is more than sufficient to offset any adjustment that may later be made in the tentative fair value used as a rate base in this case.

"It is the opinion of the Commission, moreover, that the distribution of the increased charges as proposed by the company in its suggested schedule of rates, is fair, just, and equitable. Every type of service is made to bear some of the increased burden, but the larger increase is made upon that class of service which is employed for business purposes and which is presumably directly profitable to the user. The proposed rate schedule, therefore, in general will be approved with the exception that in the case of measured services, including both the individual lines and the private branch exchange systems, where the company proposes that the first 50 local messages per month in excess of the initial rate charge shall be at the rate of  $5\frac{1}{2}$  cents each, the Commission will establish the rate at 5 cents per message for the first 100 local messages in excess of the initial monthly charge.

"The Commission has given careful consideration to suggestions made that the monthly settlement basis for measured service be abandoned and that the old system of annual settlements be re-

established. It is of the opinion that the present system is more equitable and therefore will not disturb it."

### COURT CASES

#### 300—Investment and Return

Pacific Gas and Electric Company v. City and County of San Francisco, *et al.* Report of H. M. Wright, Standing Master in Chancery, Filed March 2, 1920. 156 pages.

This report was filed in the United States District Court, Northern District of California, in proceedings instituted by the Pacific Gas and Electric Company to enjoin the operation of ordinances of the Board of Supervisors of the City and County of San Francisco fixing rates for gas service.

The report covers an investigation of the value of the company's property and its revenues and expenses.

#### 360—Depreciation

A section of the report is devoted to a discussion of Depreciation.

"As a preliminary to the discussion of this subject the positions of the parties can be briefly indicated, a more detailed statement being reserved until the evidence is considered. The company contends that its plant capital, as a basis of earnings, should suffer no deduction because of supposed depreciation due to age, but only, if at all, by the amount of 'deferred maintenance.' And where, as here, there have been abandonments of large units due to obsolescence, the loss should be reimbursed by amortization over a period of years after, rather than before, the replacement, this amortization being effected by dividing the economies resulting from new machines and processes between owner and consumer, thus allowing a partial reduction in the rate.

"The city, on the other hand, proceeds on what will be hereafter described as the modified sinking fund method, involving an estimate of the lives of the different structural units, and an annual allowance set aside from the rates received as a reserve for future replacement on a 5 per cent compound interest curve, the capital basis of return to the owner being depreciated each year in an amount exactly corresponding with yearly additions to the reserve. It is assumed that loss of plant units by obsolescence and inadequacy, as well as by physical decay, can be forecast with substantial accuracy and provided for in advance of abandonment and replacement.

"As a further preliminary, it seems necessary to refer to certain prior cases in this court. Perhaps because of the former requirement of the Constitution of California that the rates of charge of public service corporations should be fixed annually, this district has had an unusual number of suits like those at bar, and this fact, incidentally, has been the principal reason for the existence here of a

standing, or permanent master. It has also happened, if I may judge from the reports and from correspondence from all over the country, that it has fallen to this court, more than to others, to give exhaustive examination to the question of depreciation. This is because it has been completely presented by the engineering witnesses. I will refer to two principal cases prior to the present.

"In *Contra Costa Water Co. vs. City of Oakland*, two suits concerning the validity of water rates for the years 1903-4 and 1904-5, a master's report was filed in October, 1916, and since has been confirmed. It is not in print. It was shown that the company's practice had been to charge off depreciated capital only at the time of abandonment and to the operating expense of that year. It had no reserve for depreciation. This was current accounting practice; it is the replacement method described below. Indeed, the creation of a reserve by annual allowances from the revenues had been disapproved by the Supreme Court of California. *Redlands Water Co. vs. Redlands* (1898), 121 Cal. 312; *San Diego Water Co. vs. San Diego* (1897), 118 Cal. 556, Beatty, C. J., dissenting; and apparently by the Supreme Court of the United States. *U. S. vs. K. P. Ry. Co.*, 99 U. S. 455, 459; *U. P. R. R. Co. vs. U. S.*, 99 U. S. 402, 420-1 (semble); *San Diego L. & T. Co. vs. Jasper*, 189 U. S. 439, 446 (1903) (semble). The City Council of Oakland, the rate-fixing authority, valued the company's property as depreciated by age and use, and made no allowance to offset the wastage except to charge operating expense with the prior year's abandonments. When the suits came to hearing, the *Knoxville* case had been decided, 212 U. S. 1 (1909). Both sides deemed this case to require the valuation of the existing structural capital as depreciated, though no reserve had been accumulated, and to require also the provision in the costs of service of an annual allowance to a depreciation reserve for the future. There was an unusually able aggregation of engineer witnesses on both sides. The four methods of accounting for depreciation hereafter set forth were there first presented to a court. The company's witnesses adopted what I have called the modified sinking fund method, and in addition testified that as a fact, apart from the theoretical requirements of the accounting method, the past and future course of depreciation in fact, and therefore the present condition, could be determined by the application of a 5 per cent sinking fund curve to the various units according to their ages and estimated lives. The city's engineers followed the straight line method. Partly because of the direct testimony as to present conditions in fact, largely also because the straight line method involved a much greater deduction than the other method from the capital entitled to a return on the score of so-called depreciation identified with a presumed but fictitious payment to reserves in the past, and because I considered the straight line method undesirable in other respects, the master's findings followed the method and results of the company's engineers. \* \* \*

"The next case in this court to be referred to is Spring Valley Water Company vs. San Francisco (eight suits, consolidated). The report was made in 1917, and is in print, though not officially reported. The testimony was given and the discussion of depreciation written before the engineers' committee's final report was available. Leonard Metcalf, secretary of that committee, was one of the witnesses here; Allen Hazen, of New York, was another. The city's witnesses used the straight line method of figuring depreciation, as in the Contra Costa case. The company's engineers likewise depreciated the structural property. Mr. Metcalf obtained present value and the annual increment for the depreciation reserve by using a 4 per cent curve, giving effect to the results of inspection in his estimates of future life. Mr. Hazen's method was substantially the same, though with greater emphasis on an initial determination of percentage condition as an effort of judgment from careful inspection and consideration of past history. In effect, however, this required an estimate of remaining life and the assumption that future replacement cost would equal that of the present, and from this data, using a 5 per cent interest rate, the problem of present reproduction costs less depreciation because the problem of determination of the present worth of the future replacement cost. Mr. Hazen gave the master a considerable shock by stating that the best engineering knowledge was not capable of predicting with assurance the total lives of many important water works elements, even as affected by physical decay, to say nothing of the factors of obsolescence and inadequacy. Just as both sides followed what was considered the doctrine of the Knoxville case in deducting estimated depreciation from reproduction cost to determine present value, so both sides, and the master as well, felt that that case required that no consideration be given to the company's actual practice in accumulating a reserve in the past since the year 1908. The replacement method was given only passing notice. In both the Contra Costa and the Spring Valley cases, then, the issue was between the results shown by the modified sinking fund and the straight line methods, with a decision in favor of the former.

"When the Contra Costa report was written, I felt that the problems connected with depreciation had been solved, consistently both with decisions of the court of last resort and with right reason, by the modified sinking fund method. This view also characterized the Spring Valley report, though somewhat shaken by doubt as to the possibility of estimating future lives, and with greater emphasis placed on the ascertainment of present condition in fact, irrespective of theoretical amortization in the past. In the present case, the city has abandoned the straight line method and conformed to the master's former preference as to method. But my renewed consideration of the problem in the light of the evidence here, together with a consideration of current literature on the subject, leads me to the belief that the whole matter must be re-examined for a possible clearer statement. I have no hope that this report will be the last

word on the subject, but I think a step forward can be taken. At the risk of repeating what I have said before, I propose to examine the whole subject *de novo*, irrespective of the decisions; and then consider what the decisions embody.

"When we say that a reasonable rate or price is one that gives the manufacturer or utility owner a fair return on the fair present value of the property which is the instrument of production, we of course refer to a net return available for distribution or dividend to the owner after costs are paid and without withdrawing any portion of the capital. Among the costs are operating expenses, taxes and repairs. Repairs are replacements of parts that have worn out with use or have been broken by accident. If the normal operation of a machine requires only the renewal of certain bearings once a year, or other repairs constant in amount each year, obviously net earnings do not vary by reason of the repairs. And since value depends on net earnings, there is no depreciation; it is always the replacement cost new. So, if a meter could be kept operating efficiently by repairs of uniform cost, consisting of replacement of different parts, it would always be worth the same, since net earnings are not changed. There is no depreciation and no abandonment; it is the same meter, although in time no original part remains. Age and wear are thus not necessarily factors in depreciation of value.

"But repairs may not be uniform each year in other machines or structures; they may increase until no net earnings are left, or become so great that it is cheaper to replace the structures with new ones. This is abandonment because of physical depreciation. Or the machine, though physically in good condition, may become obsolete through a new invention that will effect such economies in costs as will pay the loss by scrapping of the old machine and thereafter give greater net returns. Or the service demands may grow beyond the capacity of the machine or pipe so that it is cheaper to replace it by a larger unit than to duplicate the old unit, which is still in good physical condition. Thus replacement may come about through obsolescence or inadequacy; and the depreciation in value of the abandoned unit for either of these causes is sometimes called functional depreciation.

"The difference between repairs and replacements is thus one of degree, not of kind; and the line will sometimes be hard to draw, as in the case of a pipe system. But, like repairs, provision for replacement of plant units through deterioration and abandonment is a cost of production or service which the charges to the public must provide, and which must be determined before the owner's profit can be estimated. It is the owner's duty to replace; it is the consumer's duty to reimburse the owner.

"Now, provision for this replacement can be made concurrently with abandonment, just as in case of repairs; or if the amount involved is so large as to disturb the necessary substantial uniformity of rates

of charge in successive years it may obviously be accumulated in installments, either before or after the abandonment.

"Until this case it had not occurred to me that, so far as theory is concerned, reimbursement of the owner could take place after abandonment. It would not seem fair if it involved a raise of rates. Physical depreciation, for example, if an accumulation is necessary to provide for replacement, ought to be provided beforehand from the rates of users of the service which caused the machine to wear out. But where replacement is made on account of obsolescence or inadequacy, an economy is effected in costs, and that economy can with fairness be devoted to reimbursement for the replacement cost, the rates remaining unchanged. I know of no well-considered method to meet this reimbursement after the fact. The installments would have to include interest on the unpaid principal and capital would thus not be depreciated for purposes of return. An estimate of the period of amortization would not have to be made if all economies of the new machine were devoted to the amortization; it would work itself out. If the economies were shared with the rate-payer, as plaintiff here suggests, the period should not extend beyond the estimated life of the new machine; a plan which is subject to the objection on the grounds of uncertainty common to all such estimates."

(To be continued.)

## REFERENCES

### PUBLIC SERVICE REGULATION

#### 200—Public Service Regulation—Law and Practice

Rising Costs and the Utility Commissions, by Judge David E. Blair. Public Service. June, 1920, p. 175, 1½ pages.

In an address delivered before the St. Louis Electric Board of Trade, Judge David E. Blair, says:

"Modern utilities are the outgrowth of every necessity, and their development has inevitably followed the natural demands of our complex civilization.

"The commission plan of regulating these utilities represents the modern and better attitude toward utilities and their relations with the public. Regulation supersedes competition. Public service is paramount to but not regardless of earnings of the utilities. Reasonable compensation must go hand in hand with adequacy of service. The cost of rendering that service must be provided for in the rates, regardless of franchise limitations. The State cannot suffer its police power to be abridged or limited by a franchise entered into between the municipality and its utility. Bare cost of operation does not furnish or guarantee ability to render service. No utility can long remain in a position to render adequate service unless it can show earnings for those who own its stock and bonds.

"It is no wonder that the utilities looked with suspicion upon the growing demand for state regulation. It was thought that the utilities had nothing to gain and everything to lose by state regulation and the public apparently everything to gain and nothing to lose. Had it not been for the era of high prices caused by the world war these respective attitudes might have remained

unchanged. The increasing costs of operation rendered the utilities incapable of furnishing adequate service at franchise rates, and they suddenly found their only salvation from bankruptcy or costly injunction proceedings in the courts lay in the very boards whose creation they had so bitterly opposed. The public, to its utter surprise, learned that such boards not only had the power to fix rates lower than those named in the franchise, but also the power, and sometimes the duty, to authorize rates in excess thereof. Positions were exactly reversed in short order. The opponents of state regulation became its champions; its former champions became its critics. \* \* \*

"I assure you it has been no pleasant task to concur in rulings which have resulted in increasing street car fares, gas rates and charges for electricity, water and telephone service beyond the rates named in supposedly air-tight franchises. I do not know the reason for it, but it is nevertheless true that while men smilingly and complaisantly pay two or three times the old prices for food and clothing, building materials and for their amusements, an advance from 20 to 40 per cent. in utility service rates is always met by a storm of popular disapproval. Somehow the general public does not get the idea that if labor, fuel and materials have advanced from 75 per cent. to 300 per cent. their utilities will have difficulty in rendering service at the same old price or have any honest claim for an increase in the price of their product. That is a most short-sighted attitude. But that is the attitude of at least the unthinking part of the public and these constitute the chief critics of the commission. \* \* \*

"One thing is sure and that is that unless the returns on utility investments are made more attractive and certain, it will become more and more difficult to enlist new capital in such business and the public will ultimately be the chief sufferer. Those people who already have their money invested in such enterprises cannot be expected indefinitely to put in more and more money to protect what they already have invested; in other words, they cannot be expected to continue to send good money after bad."

## GENERAL

### 780—Service

Electric Service in the American Home. Electrical World. May 15, 1920, p. 1133, 4¼ pages.

In an endeavor to ascertain the extent to which the American homes are now wired for electric service and the proportion of the people within the present reach of central-station distribution systems, the Electrical World has made a detailed study based upon recent reports from more than 5,000 electrical generating companies.

This study has been very carefully made from information covering the details of electric service in more than 10,000 cities and towns in the surrounding country districts. The summarized results are presented in tabulated form.

The central stations of the country cover at the present time territory populated by 62,023,400 people, or about 57.3 per cent of the total population of the United States. Of this population within reach of central-station service, about 55.8 per cent live in electrically lighted houses. Of the total population of the country, however, only 33,008,500, or 30.7 per cent, are enjoying the benefits of electricity in their homes. There is a total of 6,291,160 houses wired for electricity, of which 48 per cent are in the Central States. California ranks first in number of houses wired per capita with 79 per cent, while Mississippi ranks lowest with only 8.4 per cent. The total number of stores wired was determined to be 1,459,169.

## 226.2—Extension of Service

Bradford City Electricity—Works Extension, by Consul Augustus E. Ingram, Bradford, England. Commerce Reports. June 4, 1920, p. 1327.

The Bradford City Electricity Department has submitted a scheme for the erection of a new boiler-house building at the Valley Road works and the installation of four new boilers, together with all the necessary auxiliary plant, including economizers, draft fans, chimneys, motors, switch gear, cables, and coal and ash conveyors. The total estimate amounts to £322,700 (\$1,570,420).

Shortly before the war the Bradford Corporation planned to build a large generating station at Esholt, near Bradford, in order to meet the constantly growing demand for electrical power from manufacturers and others, not only in the city, but in the surrounding district. Since the armistice the Government introduced a scheme for the unification of all the means of producing and distributing electricity under State control, therefore the Bradford Corporation decided to wait until that scheme took definite shape. The Bradford electricity committee now recommends that representations be made to the (national) electricity commissioners that a capital electricity generating station be provided for Bradford and surrounding district and that the estate owned by the city at Esholt affords an ideal site which could be at once utilized.

## COURT DECISION REFERENCES

## 224—Rates

Milwaukee Electric Ry. & Light Company vs. Railroad Commission of Wisconsin. Decision of the Supreme Court of Wisconsin. April 6, 1920, 177 Northwestern 25.

Action is brought to set aside an order of the Railroad Commission requiring the plaintiff to continue the operation of one of its suburban lines because it is unreasonable in that it requires plaintiff to operate it at a loss based upon the rate fixed by the commission and received from the operation of such line. The commission entered a general demurrer to the complaint, and from an order sustaining it, the plaintiff appealed. The Court says:

"It appears that for the purpose of fixing rates the Railroad Commission has treated the urban and suburban lines as one system, and plaintiff takes no exception to such treatment, but suggests that it may run counter to the decision of this court in *Zehren vs. Milwaukee E. R. & L. Co.*, 99 Wis. 83, 97, 74 N. W. 538, 41 L. R. A. 575, 67 Am St. Rep. 844, where it was held that a street railway upon a country highway constituted an additional burden thereon requiring condemnation under chapter 175, Laws of 1897, and that the corporate limits of a city marked the boundary where such additional burden began. It is not perceived how this decision affects the commission's treatment of plaintiff's system of street railways as constituting one system for ratemaking purposes; nor has our attention been called to any other case in this court running counter to the commission's view.

"The general rule of law is that the true test of the reasonableness of a rate is its effect upon the entire system operated by the public utility, and not whether a particular part thereof is operated at a profit or loss under the prescribed rate. *St. Louis & San Francisco Ry. Co. vs. Gill*, 156 U. S. 649, 15 Sup. Ct. 484, 39 L. Ed. 567; *Puget Sound Co. v. Reynolds*, 244 U. S. 574, 37 Sup. Ct. 705, 61 L. Ed. 1325; *Groesbeck v. Duluth, S. S. & A. R. Co.*, 250 U. S. 607, 40 Sup. Ct. 38, 63 L. Ed. 1167; *People v. McCall*, 245 U. S. 345, 38 Sup. Ct. 122, 62 L. Ed. 337; *Inhabitants of Trenton v. Trenton & Mercer Co. Traction Corp.*, 92 N. J. Law, 61, 105 Atl. 136."

The order of the Circuit Court is affirmed.



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# Rate Research

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No. 13

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### PENNSYLVANIA

#### 144—Merger

Application of the Cochranon Telephone Company and the Merchants and Farmers Telephone Company, for Approval of the Acquisition of the Property and rights of the Latter by the Former Company. Decision of the Pennsylvania Public Service Commission, Granting the Application. April 13, 1920.

In approving the agreement to purchase the property, rights and privileges and franchises of the Merchants and Farmers Telephone Company by the Cochranon Telephone Company, the Commission says:

"A similar application for the consolidation and merger of these two competing telephone companies was presented to this Commission in 1916, and was refused as violative of the law as it existed at that time. In the absence of statutory authority for the creation of telephone companies by that name the courts had classed them as telegraph companies and clothed them with the rights and powers of such companies. While they only existed under and by virtue of the laws applicable to telegraph companies, it followed that they were subject to the same constitutional inhibition which prohibited the consolidation with, or holding a controlling interest in the stock or bonds of any other telegraph company owning a competing line: Cochranon Telephone Company v. The Public Service Commission, 70 Pa. Superior Ct. 212, affirmed in 263 Pa. 506. Unless these companies have since been given a distinct statutory status which relieves them from the infirmity inherited as telegraph companies under Section 12, Article XVI, of our Constitution, the present application, however meritorious, must be refused.

"The question of the propriety and desirability of these companies merging was answered in the affirmative by this Commission on their application filed at No. 516-1916. It was there determined 'that the merger and consolidation of these competing companies would be for the service, safety, accommodation and convenience of the public, if it were not contrary to law.' The facts which then moved the Commission to so find still obtain and in a more intensified form by

the lapse of the intervening time. Therefore we need not extend this report by a recital of facts heretofore existing and which continue to exist, urgently demanding that the present application be granted if these companies are to survive and the service accommodation and convenience which by their consolidation will be secured, otherwise lost, to the public. The evidence clearly and conclusively establishes, and we so find as a fact, that the merger of these companies is necessary to their continued existence, and will result in a greatly improved service, inuring to the accommodation and convenience of the public.

#### **200—Public Service Regulation—Law and Practice**

"This leaves for consideration the question of whether such merger can be legally effected. Since the Supreme and Superior Courts passed on this question in the case hereinbefore cited, the legislature by the Act of July 22, 1919, P. L. 1123, has provided for the incorporation and regulation of telephone companies; defining the rights, powers and privileges of such corporations, and authorizing and regulating the purchase, acquisition and leasing the whole or any part of the properties, systems, capital stock and securities of other corporations, associations and persons engaged in the telephone business; and also authorizing any corporation therefore incorporated under the laws of this Commonwealth and engaged in the business of furnishing telephone service to accept the provisions of the Act and thereupon acquire and possess all the privileges, immunities, rights, franchises and powers conferred upon corporations formed thereunder. The applicant companies with the approval of this Commission, evidenced by its certificate of public convenience, have accepted the provisions of the Act of July 22, 1919, and thereby are given the legal status provided by that act. If this act is a valid piece of legislation then the right of these companies to consolidate and merge is no longer open to question. \* \* \*

#### **148—Competition**

"We need not pause to cite the adjudicated cases in support of these general principles applicable to the present proceeding, but will pass to a consideration of what is shown by the evidence to be a fundamental distinction between the physical character, operation and service furnished by a telegraph company and by a telephone company. That telegraph and telephone companies have some operating factors in common must be conceded. They are electrically operated over wires strung on poles, and they have the common purpose of distant communication between persons, corporations and associations. Because of these characteristics in common and in the absence of any legislative recognition of telephone companies the courts were constrained to liken them to telegraph companies and to clothe them with the powers and limitations of corporations of that class.

"That the equipment and operation of the two systems and the ser-

vice furnished by them respectively are radically different must be conceded. \* \* \*

"It is apparent that there is a fundamental physical difference between the two systems as constructed and operated, and it is equally apparent that there is a fundamental difference in the use made of them as affecting competitive conditions. The Constitution of the Commonwealth recognizes that the accommodation and convenience of the public may be promoted by the maintenance of competing telegraph lines, whereas it is evident that the reverse is generally true as to the maintenance of competing telephone lines as aptly illustrated in the present case. With these two competing telephone companies serving a limited territory, subscribers can only communicate with each other when they have the phone of the same company. To secure communication with all the patrons of the two companies it is necessary to take and pay for two phones, and this burden as well as the burden of paying for the increased expense of maintaining and operating two competing companies to obtain adequate telephone service is imposed on the public without any compensating return or advantage whatsoever.

"In the opinion of the Commission there is a real and substantial difference in the construction, operation and use between these two systems of communication to support the Act of July 22, 1919, as a proper and reasonable classification enactment, but if we had any doubt as to its constitutionality we would in a proper case give effect to the act and leave the question for decision by the courts where it is properly lodged. In accordance with the foregoing report and determination an order will be entered approving the agreement of purchase of the property, rights, privileges and franchises of the Merchants and Farmers Telephone Company by the Cochran Telephone Company, and the issuing of a certificate of public convenience accordingly."

## WISCONSIN

### 630—Cost of Supplies

New Gas Light Company, Application for Authority to Increase Its Rates. Decision of the Wisconsin Railroad Commission, Granting an Increase. May 31, 1920.

The New Gas Light Company filed its application for authority to increase its gas rates, alleging that owing to the constantly increasing price of materials and labor, particularly that of oil, it finds itself unable to supply gas at its present rate without facing an actual loss of from \$15,000 to \$20,000 by the end of the present year. It states further that it finds itself in a position due to the recent large growth of the city where its plant and distribution system will be inadequate to take care of the increasing demand for gas. To construct additions and enlargements it states that it will require approximately \$65,000 during 1920,

and with the present rates and earnings the prospect of securing this money is not encouraging.

The company has submitted exhibits giving details of the present investment, present revenues and expenses, and an estimate of the costs during the last seven months of the year based on recent contract prices for coke, coal and oil and the increased labor cost.

The Commission says:

"In the early part of 1920 oil was purchased under a contract at 6.15c per gallon, including freight, to Janesville. The new contract, effective June 1, 1920, will increase the cost to 11.25c per gallon immediately, and it may be further increased if freight rates are raised. The cost of coke will also be increased June 1, 1920, from \$13.36 per ton to \$14.94 per ton. Coal will increase on July 1, 1920, from \$5.21 per ton to \$5.71 per ton. The increases in salaries and wages effective in May amount to \$3,000.00 per year.

"In determining the manner in which these increased costs will affect the cost of gas careful consideration was given to the manufacturing efficiencies of the plant. After a comparison with the results obtained in other plants of the same type and size, we believe that the production efficiency is as high as can be reasonably expected at this time. Assuming the same efficiencies that have existed during the earlier part of the year, the increases of the above-mentioned items are:

	Increase per M cu. ft.
Oil .....	19.31c
Coke .....	3.75c
Coal .....	.66c
Labor .....	3.00c
Total .....	26.72c

"The company's estimate of increased expenses includes a further allowance of 7.46c representing further increases during the remainder of the year in the maintenance work, and small increased costs of labor, materials and other miscellaneous items. The total increase over the first four months of this year is therefore 34.18c per M. Cu. Ft. As the cost for the period recently completed was \$1.0833, the future cost under the estimate is \$1.4251. \* \* \*

### 340—Rate of Return

"The fair return on the investment has in general been taken as 8 per cent. If this percentage is applied on the value of \$340,810 the allowance to be made is \$27,264.80. This amount, together with the additional depreciation item, totals about \$32,475 and is equal to 32.83c per M cubic feet. To pay its operating expenses under the future costs of materials, and provide proper depreciation and earn

the usual interest allowance on the property value the revenues of the company must average \$1.75 per M cubic feet.

"We do not believe that the company's estimate is overdrawn. The testimony clearly shows the existence of unusual conditions in the oil market and which, to a lesser extent, apply to the other supplies, including coke and coal. If rising costs decrease materially or obliterate entirely the margin of profit to the utility its credit and ability to expand to care for the needs of the community must be seriously impaired.

"The petitioner has presented the feature of imperative expansion as one of its principal arguments for a full and liberal return at this time. The community which it serves has had a very unusual growth in the past year, and the demands on the utility during this period have taxed its capacity. With the addition of large numbers of consumers to its system, extensive construction and reconstruction work on both its works and its pipe lines must be carried on. At this time the attraction of the necessary capital is both costly and difficult, when measured by standards of several years ago.

"Without the improvements, the company states, and we believe with good grounds, that the service will be subject to hazard and that it will be unable to take care adequately of the community's needs. We believe that under these unusual circumstances the company should be placed in a position to obtain the necessary additional capital by earning a fair return, even though the prices which it is now required to pay may be temporary. Should the prices recede materially, however, some method should be open for a corresponding decrease in the rates charged for gas.

"In order to yield \$1.75 per M cubic feet of gas, a rate slightly less than that requested by the company is sufficient. Unless conditions become steadily worse we believe the company's estimate is sufficient to cover the costs of service during the coming year. A schedule of rates will be permitted which will provide the necessary revenue as determined herein."

## **COURT CASES**

### **300—Investment and Return**

Pacific Gas and Electric Company v. City and County of San Francisco, et al. Report of H. M. Wright, Standing Master in Chancery. Filed March 2, 1920. 156 pages. (Continued from 17 Rate Research 186-190.)

### **360—Depreciation**

Continuing the discussion of the question of depreciation, begun in last week's issue of Rate Research, the report says:

"The leading case is, of course, Knoxville vs. Knoxville Water Co., 212 U. S. 1. In view of widespread controversy and adverse criti-

cism of that decision I have examined the transcript of the record on appeal to the Supreme Court. As the opinion states, the master fixed the value of the water plant at replacement value new of existing property, about \$608,000. \* \* \*

"The Supreme Court reviewed the whole case from the beginning, 212 U. S. 8. It is probable that their attitude toward the owner was unfavorably influenced by the fact that the company was overcapitalized, and that this was due to construction performed by the majority stockholders. The statements in the opinion are well known and need not be quoted. I refer only to the order in which the various propositions are developed. The court first stated that in a plant like that of a water company cost of reproduction will not correctly indicate the present value unless it is diminished 'by the depreciation which has come from age and use.' In saying, 'The cost of reproduction is not always the fair measure,' there is implied by the use of the word 'always' that it sometimes might be fairly used. They recognized that the complexity of a plant, with components of different ages and different expectations, rendered the amount of deduction for depreciation difficult of estimation; but that a substantial deduction ought to have been made. 'A water plant, with all its additions, begins to depreciate in value from the moment of its use.' But to offset this wastage, it is the right and duty of the owner to charge rates which will earn, annually, in advance, a sum toward a replacement reserve in addition to provision for repairs and profit. 'It is entitled to see that from earnings the value of the property invested is kept unimpaired so that at the end of any given term of years the original investment remains as it was at the beginning.' That the court had in mind the fact that replacement requirements would in the case before it be fluctuating and beyond the capacity of current earnings of the years of abandonments is shown by its statement that the alternative to the formation of a reserve beforehand from earnings would be the issuance of new stocks and bonds. The opinion concludes with the statement that if the owner fails to perform 'this plain duty, \* \* \* whether this is the result of unwarranted dividends upon over-issues of securities, or of omission to exact proper prices for the output, the fault is its own.'

"It seems to me that the criticisms that have so often been made of the Knoxville case are unfounded. I believe there would have been less misunderstanding if the court had reversed the propositions in its reasoning, and argued as follows: Here is a plant where the costs of periodic replacement of depreciated units will not be uniform from year to year. It is therefore a wise business judgment, a plain duty, to make provision in advance for replacement by charging consumers each year a sum sufficient to create an adequate reserve fund. The responsibility for thus providing for his reimbursement in a plant not under public regulation is solely on the owner. It follows that, at any time, the then present value of the depreciable units of a plant, whether to a buyer or to a rate-fixing authority, is



the replacement cost, less the reserves, which should have been collected up to that time. For if the reserves are sufficient and are invested in securities in adequate amount, the owner receives capital or income on 100 per cent of his investment; if not, it is his own fault. If the reserves are invested in other units of plant, themselves requiring reserves, he is made whole in the full present value of his investment if the purchase price or rating base for income is the residual (depreciated) value of all the plant units. The court, in other words, in defining present value, has properly taken the position of a buyer. The only criticism that can properly be made of the decision is that it seems to state the rule as a principle universally to be applied, though I have noted above an apparently qualifying sentence. The Knoxville rule will, I think usually be found applicable. But, as I have said, there will be found cases of established business, with long established earning capacities, and uniform replacement requirements, where a reserve will not be necessary and therefore no deduction should be made for accruing depreciation; or even cases where sound policy required an amortization or reimbursement after abandonment, in which event the abandoned property would bear interest until paid for.

"An instance of the latter sort is seen in *Kansas City Southern Ry. Co. vs. U. S.*, 231 U. S. 423, 204 Fed. 641. Grade revisions involved abandonment of portions of the old line. The Interstate Commerce Commission, by its accounting rules, required that the cost or estimated replacement value, less salvage, of the abandoned property, should be deducted from the cost of the new work, and the balance only charged to the property account, and that the cost or replacement value, less salvage of the abandoned property, should be charged to operating expenses, provided that if the amount of the charge to operating expense warranted a distribution of the same over a series of years in the future, the total amount might be charged into a 'Property abandoned account,' to be paid off from earnings during a term of years previously approved by the Commission. The Supreme Court referred to a distinction made by the Commission's brief between depreciation of units not replaced, and that of units become inadequate, and replaced by improved structures; a distinction not identical in kind, but similar in other respects to that which is here urged between depreciation through physical decay, and that which comes through obsolescence or inadequacy. Of the former kind, the Commission said, as set forth in the court's opinion: 'The structure has served its purpose, and only past operations have benefited from it. So far as the profits of past operations have not been distributed to stockholders, they are represented in the profit and loss account, and therefore such an abandonment or depreciation is properly chargeable to that account unless a special depreciation account has been established in anticipation of such abandonments; and for such an account provision has been made in the regulations. The other kind of depreciation is the result of changes attributable to the in-

adequacy of the existing property to meet the demands of the future. . . . Abandonments occasioned by changes of this character are therefore chargeable to future earnings, for the reason that the improved condition of the road is not only designed to meet the demands of the future, but presumably will result in economies of operation; and so the resulting benefits will be reaped by those who hold the stock of the company in the present and the future. The railroad company may, if it sees fit, anticipate general depreciations, and made provision for them by establishing a reserve for the purpose; but if no such provision has been made, the abandonment should be taken care of by charging them to present or future operating expense.'

'The court's attitude toward this view of the Commission is stated thus: 'A statement of the theory is sufficient to show that the regulation is not arbitrary in the sense of being without reasonable basis, and there is evidence to show that the Commission was warranted in adopting it, as sustained by expert opinion and approved by experience.'

'The case is cited by counsel in behalf of his contention that obsolescence should be taken care of by reimbursement after abandonment. It is, however, important to observe that the court was approving a policy already laid down by the rate-fixing body, the authority of primary responsibility. We must bear in mind that in the Knoxville case, where no policy of accounting had been first laid down by the state body, the Supreme Court expressed its own attitude toward accounting for obsolescence and inadequacy as well as for physical decay by requiring a reserve to be set up in advance.

'In *Railroad Commission vs. Cumberland Telephone & Telegraph Co.*, 212 U. S. 414, decided one month after the Knoxville decision, it appeared that part of the depreciation reserve had been invested in extension to plant. The court said: 'It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholder in the way of dividends. It cannot be left to conjecture, but the burden rests with complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might

accumulate; but to raise more than money enough for the purpose, and place the balance to the credit of capital upon which to pay dividends cannot be proper treatment. . . . We are not considering a case where there are surplus earnings after providing for a depreciation fund, and the surplus is invested in extensions and additions. We can deal with such a case when it arises.'

'The case has been criticized as inconsistent with the Knoxville case, and, if we view only the language employed, the criticism is justly made. For if investment in a depreciable unit is to be maintained intact by the accumulation of a reserve (the Knoxville rule) and the earning value of the unit reduced as depreciation proceeds, then the reserve must also be invested in securities or plant to earn income, and that income will be distributable as dividends. The tables illustrating both the third and fourth methods show this plainly. The court is really talking in terms of the second method, where the income of the reserve is not distributable but is necessary for the sufficiency of the reserve. It is not likely that the court intends to forbid investment of reserves in plant and so confine them to securities; that is a business or administrative question of policy which does not enter into the problems before a court. I think that what is intended to be laid down by the decision is that the total of dividends may not be increased by an investment of reserves in plant; otherwise stated, that share capital cannot be increased to the extent that reserve funds are used to build plant units. If plant item A is built for \$100,000 and shares of stock issued, and later items B and C, costing \$50,000, are added for reserve funds, than if, following the usual accounting methods, assets are carried at cost, the balance sheet would show assets of \$150,000 and the liabilities capital stock \$100,000, and reserve \$50,000. If the plant account were shown as written off for depreciation, the item A would be entered in the assets at \$50,000, B and C at \$50,000 with liabilities showing only capital stock, \$100,000, and no reserves. In the case under discussion it was not in fact shown whether or not the extensions built from reserves were represented by issues of securities, thus illustrating one of the many reasons why the amount of outstanding securities will ordinarily be of no value in determining the fair value of the utility.

'In the Minnesota Rate Cases, 230 U. S. 456-8, it was shown that the master recognized that roadbed, ties, structures, cars, locomotives, equipment, etc., become depreciated and require renewal. On the other hand, he said, roadbed becomes more valuable by solidification and adaptation; and, further, that 'A large part of the depreciation is taken care of by constant repairs, renewals, additions and replacements, a sufficient sum being annually set aside and devoted to this purpose, so that this, with the application of roadbed and adaptation to the needs of the country, and of the public served, together with working capital . . . fully offsets all depreciation and renders the physical properties of the road not less valuable than their cost of reproduction new.' The master also mentioned 'knowledge de-

rived from experience,' and 'readiness to serve' as additional offsets. He thus balanced depreciation against appreciation in value, and made cost of reproduction new the basis of fair returns.

"The Supreme Court disapproved this summary disposition in general terms of the question of depreciation. It held that 'instead of a broad comparison there should be specific findings showing the items which enter into the account of physical valuation on both sides.' The opinion points out that as regards adaptation and solidification of roadbed this had already been allowed in the estimate of cost of replacement in the sum of \$1,613,612. The court continues: 'It is also to be noted that the depreciation in question is not that which has been overcome by repairs and replacements, but is the actual existing depreciation in the plant as compared with the new one. It would seem to be inevitable that in many parts of the plant there be such depreciation, as, for example, in old structures and equipment remaining on hand. And when an estimate of value is made on the basis of reproduction new, the extent of existing depreciation should be shown and deducted.'

"Here was a railroad, and it is in behalf of railroad that the claims to justice of the replacement method of accounting for depreciation are most often made. The master's presentation as quoted suggests that that method was in his mind, though there was much that had nothing to do with the question of depreciation, and his final method of reaching a result was loose and objectionable. The court's language, however, would seem to imply a rejection of the replacement method and a following, even in case of a railroad, of the rule in the Knoxville case. However, the court's decision merely is that there must be some depreciation, and that whatever there is must be specifically shown and deducted. Even in case of a railroad it would seem that there would be needed a reserve for long-lived units of large cost, like terminal stations, and therefore that present value would be less than replacement cost new; and also that deferred maintenance would have to be deducted from the earning base. It may be there is still room for the replacement method in such items as track and perhaps equipment, if, in a given case, there is shown fair uniformity of replacement costs each year. In such case the advantage of certainty as against the uncertainties involved in estimates of future lives of units as a preliminary to estimating reserves, strongly suggests the simpler method.

"In all this long discussion I have tried to develop the point clearly that it is misleading to assume that a plant that has acquired age is worth less than new, merely because it is not new; rather it is a question of whether a reserve ought to exist in the old plant. If replacement requirements can be foreseen to throw undue stress on particular years, then the physical plant is worth less by the amount of reserve that should be on hand; if replacements will be uniform

and the plant is stabilized on a replacement basis, then we may in the proper case charge abandonments to repairs, maintain no reserve, and therefore base earnings on replacement cost new."

(To be continued)

## REFERENCES

### GENERAL

#### 226.2—Street Lighting

The Trend of Modern Practice in Street Lighting, by W. E. Underwood. *Electrical Review*, June 12, 1920. p. 980, 3¾ pages.

The last ten years have brought so many changes and improvements in street lighting that one cannot with any degree of certainty prophesy what advance will occur even in the next few years. We can, however, be certain that the public, manufacturers of street-lighting equipment and lighting engineers will look upon street lighting hereafter from the viewpoint both of pleasing appearance and of illumination efficiency. It has been demonstrated in the present modern street-lighting that beauty of design and illumination efficiency can be combined, and there is every reason to believe that the architect, the designer, the engineer, the manufacturer and persons interested in civic improvement will all have a share in bringing about still greater harmony between beauty and practicability of the street-lighting equipment and installations of the future.

### COURT DECISION REFERENCES

#### 300—Investment and Return

City of Winona v. Wisconsin-Minnesota Light & Power Company. Decision of the United States District Court. March 4, 1920.

In December, 1919, or in January, 1920, the Wisconsin-Minnesota Light and Power Company notified the city authorities of the City of Winona that it proposed on and after February 1, 1920, to increase the price of gas to \$2.00 per thousand cubic feet. On January 24, 1920, the city council passed two ordinances fixing the maximum price to be charged for gas at \$1.45 per thousand cubic feet.

The present hearing is upon motion by plaintiff city for a temporary injunction restraining the defendant from charging or attempting to charge more than \$1.45 per thousand cubic feet for gas in said city; also upon a motion by the defendant to restrain the city from enforcing or attempting to enforce the two ordinances of January 24, 1920, or taking any steps to forfeit the franchise of the defendant company by reason of its refusal to obey said ordinances.

The court says:

#### 224.2—Contracts

"Unless very exceptional circumstances exist, injunction is not the proper remedy to prevent violation of ordinances. See McQuillan Mun. Ordinances, sec. 286. The present case is not one where the city is seeking to prevent the violation of a public utility contract which fixes definite rates. Such was the case of Borough of Belle Plains v. Northern Power Company, 142 Minn. 361; 172, N. W. 217. Furthermore, plaintiff City is granted in its charter a remedy for enforcing its ordinances. Spec. Laws Minn. 1887, ch. 5, sub. ch. 4, sec. 5. Such remedy is generally held exclusive. 28 Cyc. 781.

"The motion of the plaintiff for preliminary injunction must, therefore, be denied. \* \* \*

"The main showing upon this present hearing has been upon the second ground, that the rate of \$1.45 per thousand cubic feet is confiscatory. The rate having been established by ordinance, the presumption is in its favor, and the burden is upon the defendant company to overcome the presumption. This the company has attempted to do by making a showing upon the hearing as to the amount of its capital investment, its operating expenses, its other charges and expenses, and its gross and net income. It is to be noted that the rate of \$1.45 per thousand cubic feet has already been in existence for more than a year, so that an actual test of the rate has been made."

### 300—Investment and Return

"It is claimed by the city that in determining whether the rate \$1.45 per thousand cubic feet is confiscatory, computation must be made upon the basis of charging the maximum amount on all of the gas sold, inasmuch as this measures the legal right of the defendant company. In other words, that the return must be computed at the amount the company has the right to collect under the ordinance. The plaintiff cites in support of this contention *Knoxville v. Knoxville Water Co.*, 212 U. S., 1. The point appears to be well taken, and for the purposes of the present hearing it will be assumed that this contention on the part of the plaintiff is well founded. The result of this would be to increase the net earnings by about \$4,000; so that for present purposes it may be assumed that the net earnings of the defendant company available for depreciation and return on invested capital amount in round numbers to \$30,000. The great bulk of the evidence introduced upon the hearing has been in reference to the amount of invested capital on the part of the defendant upon which a fair return should be computed. An inventory of the physical property taken as of May 1, 1919, furnishes the basis for the valuation; and the items of the inventory are not disputed for the purposes of the present hearing. The method of reaching the valuation of the physical property by both parties has been that of reproduction cost new, less depreciation. The main differences have arisen by reason of the different unit prices adopted by the parties respectively. Experts on the part of the plaintiff have used a unit price based upon prices prevailing from the year 1900 to the year 1914. Upon such basis the valuation of \$245,485.00 is reached for cost of reproduction new. The depreciated value is placed at \$159,565.00. To these amounts there is added for engineering and interest Management and Incidentals during Construction, 14 per cent, making the total for depreciated value \$181,904.00. To this pre-war value is added 25 per cent in order to reach present normal value, which is given as \$227,380. To this is added value of land, \$8,300; working capital \$10,000; Development Cost, or Going Value, \$15,000; making a total of \$260,680. The experts on the part of the defendant company have computed values on three bases: first, on prices as of May 1, 1919, it being conceded that prices at present are approximately the same as of May 1, 1919; second, on average prices during the five-year period immediately preceding January 1, 1919; third, on the basis of pre-war prices for the average period of five years before 1914. \* \* \*

"It is neither necessary nor advisable upon the present hearing to go into the niceties of the figures presented by the two parties respectively; it is sufficient to say that after a careful examination I have reached the conclusion that the figures presented by the defendant are probably over-liberal, and that those presented by the plaintiff city are probably ultra-conservative. To illustrate: Among other items in the defendant company's figures which it seems to me may be open to criticism is "Cost of Financing." It is not shown that any such amounts as are given, \$44,984 and \$58,959, have in fact ever been expended, or indeed any amount whatever. The item itself as far as the present showing is concerned, seems to be purely theoretical. It is a serious question in my mind whether this item ought not to be entirely eliminated. And the item, 'Working Capital,' is also open to criticism. It

would seem that this item ought to be a practical conception and concretely established from the company's books. The amount given in the figures presented by the company appears to be largely a theoretical estimate. The amount of the item 'Going Value' might well be subjected to close scrutiny."

### 313—Unit Prices

"Perhaps criticism of the valuation figures presented by the City can best be made by comparing the attitude of its expert, as shown by his estimates, with the attitude of the Supreme Court toward the same matters, as shown by certain statements recently made by it. Plaintiff's expert in his affidavit states:

"That beginning at about the year 1915 prices of material, labor and all construction costs which had been reasonably constant since about 1900, began to rise, and reached an abnormal level in 1917; that since about 1917 these prices have constantly fluctuated and have remained far above the normal level. That neither the current prices during 1919 nor the average prices for any five-year period subsequent to May 1st, 1914, can be considered normal or fair or as reflecting actual or fair values; that while it is impossible for anyone to accurately predict future costs or prices, deponent's best judgment is that prices have reached an entirely abnormal and practically prohibitive level, and must materially decline in the near future."

"In *Lincoln Gas Co. v. Lincoln*, U. S. Sup. Ct., June 2, 1919, the court used the following language:

"Perhaps it would go without saying, but in our opinion the decree ought to be modified so as to permit complainant to make another application to the courts for relief against the operation of the ordinance hereafter, if it can show, as a result of its practical test of the dollar rate of operation, and the current rates of return upon capital as they stand at the time of bringing suit and are likely to continue thereafter, that the rate ordinance is confiscatory in its effect under the new conditions. It is a matter of common knowledge that, owing principally to the World War the cost of labor and supplies of every kind have greatly advanced since the ordinance was adopted, and largely since this cause was last heard in the court below. And it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnished no safe criterion for the present or for the future."

"The frequent use of the words 'normal' and 'abnormal' by the expert, and the entire absence of the use of these words by the Supreme Court, is to be specially noted. This last expression of opinion of the Supreme Court in the *Lincoln Gas Case* is quite in accord with previous decisions holding that 'what the Company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public.' This has been announced as the true rule whether there has been an increase in values, *San Diego Land Co. v. National City*, 174 U. S. 739, 757; *Wilcox v. Gas Co.*, 212 U. S. 19, 52; or a decrease in values, *San Diego Land Co. v. Jasper*, 189 U. S. 439; *Stanislaus Co. v. San Joaquin*, 192 U. S. 201, 215.

"Nor is it necessary upon this hearing to determine what particular unit prices should be used as a basis. Two things, however, seem tolerably clear: first, that though present prices may be somewhat too high to form a proper basis as unit prices, yet it is more than probable that a plane of prices much higher than the one existing before 1914 will continue for a considerable and perhaps for an indefinite period; second, that the defendant company, a public utility, not being prevented by contract from invoking a continuous

fair return on a reasonable valuation, is in a position to rightfully demand revision upwards of the prices charged for gas because of present condition of high values, high operating costs, and high rates of return, even though the adjustment may fit a comparatively short period of years.

"It is also true that the city, being also unhampered by contract, may in the not distant future be entitled to enforce a revision downward of the prices charged for gas, by reason of changed conditions.

"While the present suit may lead to a rate which will be fair for a comparatively brief period only, nevertheless this contingency should not prevent an inquiry into and an adjustment, if necessary, of present rates. The presumption in favor of the present rate of \$1.45 per thousand cubic feet has, in my judgment, been fairly met and overcome by the showing on behalf of the defendant. I think it fairly appears from the evidence submitted that the present rate (\$1.45) has not produced and it is not likely to produce, sufficient net income to meet depreciation charges, which are placed at 2 per cent. (apparently without criticism), and also to provide a fair return upon a valuation which can be considered reasonable in view of the showing made. "In view of the foregoing, and as bearing upon the propriety of the issuance of a preliminary injunction, I am of the opinion that there is a fair probability that the defendant will succeed in attaining some relief in the way of increased rates in the present suit; that there are numerous grave and difficult questions involved in the controversy; that the balance of convenience is to whether a preliminary injunction should issue or not favors the defendant company. The rule applicable in this circuit is as follows:

"It is a familiar rule of equity jurisprudence that if the questions presented in a suit for an injunction are grave and difficult, and the injury to the moving party will be certain, great and irreparable if the motion for the interlocutory injunction is denied, and the final decision is in his favor, while if the decision is otherwise, and the injunction is granted, the inconvenience and loss to the opposing party will be inconsiderable, or probably may be indemnified by a bond, the injunction should be granted."

Love v. A. T. & S. F. Ry. Co. 185 Fed. 321.

"It is true that a preliminary injunction might be denied on conditions that the city furnish a bond to reimburse the defendant company in case relief from the present rate should be afforded by final decree. The propriety of requiring from the city such a bond under present circumstances is more than doubtful. In similar cases the usual practice has been where the presumption is in favor of the existing rate has been fairly overcome, as in my judgment has been done in the instant case, to require either a bond on the part of the utilities company, conditioned to reply to consumers any excess charges or to impound any charges over existing rates with a view to reimbursing consumers in case it is found that excessive charges have been exacted. Such was the practice pursued in the Lincoln Gas Case, 250, U. S. — U. S. Sup. Ct., June 2, 1919; in the Cedar Rapids Case, 223 U. S. 665; in the Des Moines Case, 238, U. S., 153; in Wilcox v. Consolidated Gas Co. 212 U. S., 19.

"For the reasons stated above, and in view of the fact that the pleadings in the case have been completed; that complete inventory of the property has already been made, and is accessible to both parties; that a test of the present rate has been made during the period of more than a year, an order will be entered granting the motion of the defendant company for a preliminary injunction, but upon condition that a bond be given to secure the repayment to consumers of excess charges, if any, and to insure the keeping of proper accounts for the determination of such charges; second, that pending final hearing, and until the final decree, or until the further order of the court, the defendant company shall not collect or charge for gas in the city of Winona any rate in excess of \$1.65 per thousand cubic feet."



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**Rate Research**

**Vol. 17**

**JULY 1, 1920**

**No. 14**

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# Rate Research

Vol. 17

New York, N. Y., July 1, 1920

No. 14

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### IDAHO

#### 400—Rate Theory

Idaho Power Company, Application For Authority to Increase Its Irrigation Rates. Decision of the Idaho Public Utilities Commission, Granting an Increase. June 2, 1920.

On January 9, 1920, the Idaho Power Company filed with the Commission its application for permission to put into effect a proposed new schedule of irrigation pumping rates.

The proposed new schedule would result in marked increases in the rates for irrigation service, amounting in some instances to 60% or more. These increases the Power Company alleged in its application to be necessary to provide a fair compensation based upon the cost of the service furnished to the irrigation customers, and further alleged that the increase in revenue was required at the time of filing because the demand for irrigation service was very rapidly increasing and the Power Company was confronted with the necessity for largely increasing its plant and system capacity to meet these irrigation demands. The difficulty of obtaining money for public utility investment under present conditions, and particularly the difficulty of obtaining such money when the service to which the investment would be largely devoted was alleged to be paying a rate below that which would cover the cost of such service, is dwelt upon at some length in the application.

The inquiry very quickly went beyond the sole question of irrigation rates, and apportionments for that service, and extended into all classes of service and all classes of rates. The attitude of the interveners seemed to be that they realized the necessity for sufficient revenue to the Power Company to enable it to obtain necessary money for additions to its plant and system to accommodate new service demands, but that they did not feel that in the absence of very complete inventory and appraisal data, and careful studies based thereon, a just apportionment could be made to any one class of service; and further, that as conditions of increased cost of labor and material were caused by a change in general conditions, it would be more fair and equitable, at least until the fullest information was available, to meet the situation with a general distribution of the burden. In other words, if an increased revenue

was shown to be reasonably needed, that this increase should be spread over the entire service without attempting to impose a major part of the burden upon any one service.

The Commission says:

"At the time the present irrigation rates were established the Power Company had an excess capacity and also a very considerable difference between its summer peak load and its winter peak load; and the rate seems to have been put in effect with the idea that this excess capacity could be turned to service profitably at a very low rate. This may have been all right at the time the rate was initiated, but the irrigation demand grew more rapidly than the non-irrigation demand, until during the year 1919 the summer load exceeded the load of the previous winter by over 7000 kilowatts. Of this summer peak the irrigation demand consisted of something in excess of 40% of the whole, and the demand for power for new irrigation service for 1920 shows a still further increase over the non-irrigation demand. The system has become somewhat top-heavy with low rate, seasonal service, and if irrigation demands continue to grow and new investment under the present conditions be required to meet it, this condition will become worse.

"For that reason, in so far as new irrigation service is concerned, that is, service for which new investment has been or will be required under present conditions, we believe a rate should be established which will fairly meet the cost of such service, because such service will simply be so much more piled upon the present irrigation excess over non-irrigation service. We are not disposed to hold that those who began their reclamation under the plant costs and conditions of several years ago should now, and while their farms are still in process of development, and before that development has reached a point where it is reasonably complete, be called on to bear a part of the cost of building for and rendering service to the new-comer. It is undoubtedly the success of the pioneers in the reclamation of lands through electrical pumping that has induced the large present demand for new service in this field. Reclaiming arid lands and bringing them into successful and profitable production is not either an easy or a speedy process. From the evidence before us it appears that a minimum of five years is required, under the most favorable circumstances and when sufficient capital resources are available, to reclaim a piece of desert sagebrush land and bring it to the point where it shows its highest productive qualities. Where the farmer is dependent upon what he can raise upon his land to accomplish this improvement, the time required is greatly increased. Only a few of those whom we may deem pioneers in this work had sufficient capital to enable them to achieve results quickly. Most of the others have put in their years of hard work under hard conditions, and have not yet reached that point where their lands are either all in cultivation or fully productive. Under the stimulus of the coun-

try's need of farm products during war times improvement was much more rapid than would normally have been the case, but a great many of the irrigation farmers who are dependent upon electrical power for pumping service have their farms still in the developmental stage, and all they can fairly be asked to do at this time is to bear their reasonable proportion of the burden assumed by them under the rate balance that existed when they began their work."

#### 650—Discrimination

"It is urged that this will create a discrimination between two classes of irrigation customers. That is, between those who began their development under former condition and those who desire now to begin their development, and that this discrimination will tend to check the growth of irrigation through power pumping. This may be true, but the situation results from the fact that the old irrigation customers made use of plant already installed under a former cost condition, while the new customers require new capacity, built under present cost conditions. We cannot return conditions to the 1915 status for the benefit of the newcomer, and we will not ask the 1915 customer, before his development is complete, to help bear the costs of service to the 1920 customer.

"The patrons of the Power Company for all classes of service have accustomed themselves to the balance as it is. In view of the fact that we will enter upon a valuation hearing and rate study of the Idaho Power Company's activities as soon as the inventory and appraisal required by law shall have been filed, and from which we may reasonably expect to have made available the full facts in all respects relating to the business and the several classes of service, and for the further reason that any change in the balance of the rates will have a disturbing influence upon industries, we will make no change in the rate balance at this time, the necessity for which is not fully disclosed and admitted or which will affect more than a very few patrons.

"The district served by the Power Company is growing very rapidly, the agricultural districts are filling up, cities and villages increasing in size and manufacturing industries gaining in both number and scope. In this development a reasonably sufficient electrical service is necessary. The present capacity of the Power Company has been absorbed through growth, and further supply can be had only through the medium of new construction. To secure the money with which this can be made the field must be made reasonably attractive in the way of return upon the investment. We consider that the matter is of an emergency nature and that we must now face a choice between an unmet demand for further electrical service by the public, and a provision for an increase in the revenues, if this be justified, sufficient to encourage further investment with which to meet the demand.

**410—Cost of Service**

"The public holds 'service' as the most important consideration. It demands and has a right to expect that there shall be available a sufficient quantity of service for all who need it, and that the quality shall be of the best. Rates reflect service, as service cannot be furnished unless the costs are met. When costs change, a utility must either have some way of meeting this through revenue, or service suffers. It is no more practical to overload an investment in public service than it is to overwork a horse; the ultimate result is the same in both instances: The public lacks patience with a utility which permits its service to be overloaded. It considers, and rightly, that the service problem is what the utility is paid to look out for. The utility hires its own managers, engineers and experts. The public stands ready to pay for, but demands, results. If the utility needs increases in revenues to produce results its duty is to say so and to lay the cards on the table to show the need. If the need reasonably exists the public expects the Commission to act accordingly. Increase in rates, when necessary to enable a utility either to keep its service at the point the public demands, or to attract new capital with which to make needed increases, are justified.

**340—Rate of Return**

"In examining the sufficiency of the utility's revenue as it now exists, we have assumed 8% as a reasonable rate of return on investment. We do not hold that this is necessarily a reasonable rate of return or a proper one to be charged. That is a matter for careful investigation and study. Under present conditions it is doubtful whether money can be obtained for utility investments at 8% interest, so that we believe the rate for the purpose of this examination to be in no way excessive. The allowance for depreciation reserve is taken as 4%. The operating expense of 1919 is taken, although the 1920 operating expense will probably be somewhat increased over that figure. In the course of the hearing there developed some question as to the propriety of certain charges made to operating accounts. A complete solution of these questions was not found, because of lack of data and of time in which to fully investigate each instance. In order, however, that no doubt may arise we have deducted \$50,000.00 from the 1919 operating total, this amount being more than sufficient to cover all of the items about which there could be a question of distribution, capital account, depreciation or surplus.

"The Power Company claims a book value of plant and system property used and useful in the public service in an amount exceeding \$23,000,000.00. A valuation will be found and fixed in the proceedings hereafter to be had, but for the purpose of our present examination we have assumed a value of \$12,000,000.00. \* \* \*

"The result of the 1919 operations and the estimate for 1920 do not promise an easy market for funds with which to make further con-

struction against an increased service demand. Obtaining money for a further investment when that already made is not yielding a compensatory return is difficult, and while the continuing growth of the district in which the Power Company operates will, undoubtedly, make the return ultimately satisfactory through a greater number of customers in proportion to the investment, the time when the preparations must be made for the new demands is now. If we do not need further service, the problem would not be so serious, but as we have suggested above, we have to make a choice between the growing demand for service by the public and meeting it, and the need of the Power Company for more money in the way of revenue to enable it to obtain funds for plant and system increases. The deficit indicated in the 1919 operations comes in large part from the increased cost of labor and materials, with which everyone is familiar. This affects each type of service in the same way and to the same extent. If we were to attempt to remedy this general trouble by the adjustment of rates for just one type of service, we would either have to impose an unfairly heavy burden on the customers in that class or fail to provide a sufficient revenue increase to secure assured service, and service requirement is the fundamental reason for action. Each customer must appreciate the situation, and should bear his fair share of the common burden. We deem the following increases to be justified:

1. Commercial lighting .....	10%
2. Street lighting .....	10%
3. Commercial power .....	10%
4. Sales to other public utilities except street railways.....	10%
5. Air heating service.....	15%
6. Irrigation pumping service, Class "A" customers, to the extent of their 1919 demand.....	10%
New Demand .....	20%
7. Irrigation pumping service, Class "B" customers, to the extent of their 1919 demand.....	10%
New Demand .....	20%
8. Irrigation pumping service, Class "C" customers, to the extent of their 1919 demand.....	15%
New Demand .....	25%

"The increase of 10% amounts to no more than the discount formerly allowed.

"The question affects the entire service and is so general as to affect the public welfare. The increases provided will apply to all customers in each class named, whether service is rendered under a contract or not.

"The above increases shall not apply to irrigation pumping service furnished to the North Side Pumping Company, as we find that under its contract, which was entered into before the organization of the Idaho Power Company, the North Side Pumping Company has been paying a higher rate than other customers will no more than even up their rates with the North Side Pumping Company's rate.

"Existing rates for cooking service, for domestic water heating and for street railways will not be changed at this time."

### CALIFORNIA

#### 224.5—Rates Fixed by Contract

Lake Hemet Water Company, Application For Authority to Increase Rates. Decision of the California Railroad Commission, Granting an Increase. April 19, 1920.

The Commission, on October 21, 1916, made an order fixing rates to be charged by applicant for water supplied to its consumers. Subsequently, a number of the consumers, being owners of some 300 tracts, joined in a petition for a writ of review to the Supreme Court of the State of California, wherein they asked for an annulment of the Commission's order on the ground that the service of water to them by the applicant herein was pursuant to certain private contract rights held under so-called water certificates which petitioners had purchased from the applicant. The writ issued, and in its decision thereunder the Supreme Court, after holding that petitioners were, as they contended, entitled to the use of the water in question as a matter of private right and not by reason of the fact that they were beneficiaries under a system devoted to public use, concluded as follows:

"Third, for the reason that the character of the business conducted by the water company and water users authorized the state to declare the same a public utility, and to provide for the fixing of rates by the Railroad Commission, whose duty it was to fix rates in due recognition of the private rights of water certificate holders in such property, and that the intervention of this court is only proper where a clear violation of such rights appears. *Allen vs. Railroad Commission*, 179 Cal. 68, 98."

The Commission says:

"The primary question before the Commission in this application is the fixing of rates for water served by the applicant which is not, under the decision in the *Allen* case above referred to, furnished by the applicant to its consumers as a matter of private right, but, on the other hand, is a public utility service by the applicant, and, therefore, subject to regulation by this Commission.

"It was admitted that water furnished by the applicant to its consumers from November 15 to the following April 15, each year, and that all water furnished in excess of the amounts fixed by the provisions of the so-called water certificates, was in the nature of a public service of water dedicated to public use, and that the rates to be charged therefor are subject to the Commission's jurisdiction. Applicant, however, contends further that the certificate holders who did not join in the petition for writ of review by the Supreme Court have, by their failure in this regard, acquiesced in the fixing of rates



by the Commission, and therefore, under the rule announced by the Supreme Court in the case of *Franscioni vs. Soledad Water Company*, 170 Cal. 221, they have impliedly consented that their use of the water as a matter of private right under the terms of the water certificates, be converted into a public use, the rates to be charged thereon thus becoming subject to the jurisdiction of the Commission.

"We do not agree that the principle of law laid down in the *Franscioni* case is applicable to the present instance. There, it was unquestioned that not only the company, but all of the consumers, had consented that the rates to be charged for water served by the company be regulated by public authority. Granting, for the sake of argument, that a part of such a body of water users under private contracts could, by agreement with the company supplying them, convert that portion of the service from a private to a public use, the evidence in this case does not show such consent on the part of the consumers. The mere fact that a number of consumers did not join with others in the petition for writ of review to the Supreme Court, does not justify the conclusion that they thereby acquiesced and consented to such exercise of jurisdiction by the Commission. The fact remains that vigorous opposition was made to the regulation of rates by the Commission of water served pursuant to the rights held under the water certificates. Some, though not all, of the protestants before the Commission herein joined in the petition for writ of review to the Supreme Court. This proceeding was in reality viewed as a test case by all concerned.

"As above indicated, the applicant herein does furnish water otherwise than under the water certificates, and in so doing is rendering a public utility service.

"The Commission, therefore, has jurisdiction to fix rates for this portion of the service."

## **NEW JERSEY**

### **620—Factors Affecting Rates**

*Ocean City Electric Railroad Company. Application for Authority to Increase Its Fares. Decision of the New Jersey Board of Public Utility Commissioners, Granting an Increase. May 20, 1920.*

The Ocean City Electric Railroad Company is operated during part of the year by a trustee appointed by the Chancellor in accordance with Chapter 169, N. J. P. L. 1919.

The Ocean City Electric Railroad Company is the only street railway in the State being operated under the law referred to. For the past two years the fare charged when the road has been operated has been a straight fare of seven cents.

The trustee asserts that it is impossible to operate the road under the

fare of seven cents "without causing a substantial deficit as the result of said operation, which deficit, under the provisions of the statute above referred to, must be borne by the City of Ocean City, upon whose application your petitioner was appointed trustee."

The Board is asked to approve a single fare charge of ten cents, with the proviso that between June 15 and September 15, 1920, a commutation ticket, good between said dates, shall be sold at a rate of fourteen rides for \$1.00.

The Commission says:

**626—Seasonal Factor**

"Those who benefit by the operation of the road are largely sojourners for a comparatively short period during the summer at the resort. While the rate proposed is exceptionally high and, under normal conditions of operation, might tend to discourage travel to an extent which would defeat its purpose, it is probable that during the season of operation it will not greatly deter those who would be inclined to use the road.

"If the operation continues under a fare which would result in a substantial deficit, this would have to be defrayed by a comparatively small number of residents and taxpayers.

"There may be some question whether the provision of the street railway facilities at the lower rate of fare would not add to the attractiveness of the resort and therefore be a wise municipal expenditure from which ultimately the municipality would receive a benefit that would offset the amount made up as a deficit.

"This, however, would be a matter for the people of the municipality to decide for themselves.

"As it appears to be the desire of the municipal government, and of the public, so far as public sentiment has been made manifest by the governing body of the municipality and civic organizations, independent of the municipal government, that the fare should be increased the Board will approve the rates submitted and will permit the same to be made effective May 28, 1920."

### **COURT CASES**

**300—Investment and Return**

Pacific Gas and Electric Company v. City and County of San Francisco, et al. Report of H. M. Wright, Standing Master in Chancery, Filed March 2, 1920. 156 pages. (Continued from 17 Rate Research 186-190, 199-205.)

**315.1—Going Value**

"In approaching one of the most difficult problems in any valuation

proceeding, it may be well to pause for our bearings and consider just what stage we have reached. We are engaged in determining the value of the instrument of gas production in San Francisco, the property used and useful in serving gas, the purpose being to determine a base upon which returns to the owner shall be calculated, and, as to the depreciable part of it, to determine the necessary provision in reserves for periodic replacement, both of these constituting elements in the reasonable cost of production and delivery of gas, our ultimate problem. The necessities of careful appraisal have required us to proceed by units of property. Units of real estate have been appraised at market value. Units of structural plant have been appraised at current standard replacement costs. An estimate of necessary working capital has been made. All of the property has been covered, except the franchise, which is later considered and for the moment may be left out of view. Is the value we seek the sum of these units? Plainly not. The test of value in this proceeding is the same as in any judicial investigation of value, viz: market value, value in exchange, what a willing buyer and a willing seller would agree upon. The appraisal just described is not of the property before us. It fails to recognize that the elements of the property have been unified into an organic whole. It fails also to recognize that the property before us has age, a history, and with age and history an environment and an established business. The acquirement of age would influence a buyer in two ways—one a factor of decrease of the value found in the way described; the other a factor that might in given cases increase value as found to a substantial degree. The factor of decrease is, of course, what is usually called depreciation, already discussed and determined; what I have preferred to view as the amount of reserves for replacement that prudent accounting would have dictated. The factor of possible increase is what we are concerned with under the title of Going Value. Let me explain why I characterize the increase with age as 'possible.'

"If the plant under appraisal were just completed, but as yet without business, it would be worth the figures we have reached, but without any deduction for depreciation, and without any addition for going value. (It would be worth something more than we have reached, due to the fact that the interest during construction has been carried on each unit to the period of operation, and the parts assumed to go into operation successively as completed.) A buyer would pay at least value new for such a plant; to say he would pay less, e. g., scrap value, is to assume the plant was not worth building. Suppose now the plant has acquired age. If the population of San Francisco had decreased from 500,000 people when the plant was built to 5,000 when the appraisal took place, there would obviously be no going value or even replacement value; it would have a scrap value only. An instance of this second class of public utility plants is familiar to us in the case of the electric street railroads of this country. Ten years ago they were among the most successful public service enter-

prises, well built and maintained, furnishing a service absolutely necessary to community life. A few years ago, even before the recent abnormal increases in operating costs, many of them were in the hands of receivers or creditors' committees. With rates fixed by long custom, the competition of automobiles reduced their earnings to a point where they could no longer pay their way. It would seem that the buyer of a road in such a condition would be unlikely to add anything to his price for going value; the road would probably sell for an amount anywhere from scrap value to replacement cost less depreciation, depending on circumstances. But if the road in the hands of the new owner possessed sufficient inherent strength by favorable location and wise management to weather adversity and win its way back to its original prosperity or a greater prosperity, then it would be fair to say that it had increased value as compared with an untried enterprise. It would offer evidence of stability, of seasoned earning power that would be attractive to the buyer or investor. Such a road, if appraised at replacement cost less depreciation and plus its reserves, ought to bring more money upon a sale than a new road of equal cost, without business but about to start service in a new field. The amount of that difference, the additional amount that a buyer would pay over the physical appraisal on the basis stated, is what we call going value.

"The discussion makes plain, I think, the fallacy of the argument against an allowance of an amount of capital in recognition of going value urged by certain writers and rate-fixing authorities, by the counsel of San Francisco in the Spring Valley Water cases, and perhaps a little more faintly here, viz: that an appraisal by market value for land and replacement cost, less depreciation for structures, is an appraisal of a going plant, and, therefore, inclusive of going value, since otherwise the plant, if not a going concern, would only be worth scrap value. As I stated in the Spring Valley report, the apparent dilemma is falsely constructed. The comparison is made between the successful enterprise and the one that has utterly failed, the second plant in the illustrative discussion above. It fails to take account of the first type of plant referred to, that which is new, without business, but with the probability of business, which is worth cost new. It is this point, with the additional deduction of depreciation, that we have reached in this appraisal, and we have still to take account of the additional value of the going concern that is before us.

"It is evident that this 'going value,' though described by the Supreme Court as a right of property protected by the Fourteenth Amendment, is not a separate thing, an independent productive unit like a generator. It is rather a quality, an element of value attached to and inhering in every tangible part of the property—what Judge Savage, in one of the Maine Water District cases, and Judge Farrington of this court, in the 1903 Spring Valley Water case (192 Fed.), called a characteristic of the property and its business. It has also been well called the value of a survived risk. Value here, as elsewhere,

does not depend on cost. Usually costs have been incurred: expenditures for deficits; expenditures for losses of property by casualty, by mistakes or otherwise; expenditures to get new consumers or new kinds of business by solicitation or education. But if these risks of loss have not only been survived, but have actually not been experienced; if the enterprise has by fortunate chance, through location, able management or wise construction, been successful from the beginning, it seems to me that a buyer would recognize the additional going value of such a plant and business, equally as he would where losses have been successfully survived.

"In my report in the Spring Valley Water Company cases (printed pages 181-202), I have reviewed the law on this subject as developed by the Supreme Court of the United States concerning intangible values generally, and specifically the value of a successful going concern. I may refer the court to what was there said. It was approved by the reviewing judge, and represents the law of this court as well as of the ultimate tribunal. In brief, it amounts to a mandate to find a going value over and above the sum of the value of the units of plant as appraised by cost of reproduction.

"The review of decisions upon this subject contained in the Spring Valley report should be supplemented by a reference to *Denver v. Denver Union Water Co.*, 246 U. S. 178, decided March 4, 1918, after the Spring Valley report and decision, and after the present cases were heard and submitted. That case on its facts was stronger than the cases at bar, for the reason that the franchise of the Denver company had expired and its occupancy of the streets with its mains could be terminated by the municipal authority. There, as here, the city, while admitting that a going value should be included in an appraisal for purchase, denied that it should be considered in an appraisal in a rate-fixing case, and contended that where property had been appraised by market value and, as to structures, by replacement cost less depreciation, going value had been sufficiently recognized; that, to quote the master's report, 'such property right has been sufficiently considered when the physical property of the plant has been appraised at a sum in excess of its "junk" or "wreckage" value.' The master denied that contention on the authority of the *Des Moines Gas* case, 238 U. S. 153, 165. His method of appraisal and of reasoning is an anticipation of what I have said here and in the Spring Valley report. The Supreme Court fully approved the master's reasoning, his reliance on the *Des Moines* case, and the amount allowed for going value. (246 U. S. 183-186, 191-2.) The decision is thus in exact parallel with the present case and is of controlling authority.

"We may here notice, in advance of our discussion of the evidence, what the master in the *Denver* case had to say in determining the amount to be allowed. After stating that the estimates of witnesses warranted an appraisal of the element of going value at \$1,100,-

000, he referred to the monopolistic position of the water company in a semi-arid country, and concluded thus: 'There is no absolute standard by which the fair value of this element can be determined and I adopt \$800,000, because no matter how often I have considered the evidence and the arguments, my mind always comes back to this amount as reasonable and fair to all parties.' I quote this because it was evidently satisfactory to the Supreme Court.

"I wish to pause, also, to add to my résumé of the law as contained in the Spring Valley report, a thought about 'good-will.' It will be recalled that in the Consolidated Gas case, the Supreme Court said there was no room for a good-will value, where the company possessed a monopoly in fact. The plaintiff here has such a monopoly. It occurs to me, however, that the last word has not been said when we recognize merely the absence of other companies. For there is still competition with other fuels for heating purposes—oil, coal, wood and electricity, oil and electricity being especially active and with other illuminants, especially electric energy. When this competition is met with some success, it would seem that there is in fact an element of choice by consumers inconsistent with the idea of monopoly, and that there is, therefore, a logical basis for here considering good-will as an element in going value. I have, however, given it no consideration or influence in my determination of value. \* \* \*

"A careful reading of the testimony will show what has perhaps been made evident by this discussion. The figure we seek is not one that is susceptible of mathematical demonstration. But it is also made quite plain that the figure to be assigned to the element of going value is very large—to use Mr. Lowe's language, several millions of dollars. The figure must be reached by an honest effort of judgment of the tribunal charged with responsibility, based on all the indications of value and its amount that can be marshalled together. The result will, of course, be an approximation and in a constitutional case like this, a low approximation. It is, of course, obvious that such approximations by an effort of judgment where decision must be made are not unique. The real estate appraiser does it; so do juries and judges in many classes of cases. Perhaps the language of the master in the Denver case, hitherto quoted, is a fair way of stating how the job must be done.

"Finally, I have borne in mind the attitude of the judge sitting in this court, who reviewed the Spring Valley report. There an allowance of \$3,400,000 for going value was reduced to \$1,400,000. While his reasons are not fully stated so as to guide me here, and the specific reason given is not here applicable, it shows that to another mind the master's allowance was so excessive as to be out of reason. Naturally I do not wish such a result to follow again. After due consideration of all the evidence and with a desire to reach a fair but conservative estimate, I allow \$1,500,000 in each of the years

under examination to cover the additional value of the property appraised, viewed as a going concern."

(To be continued.)

## REFERENCES

### INVESTMENT AND RETURN

#### 360—Depreciation

Depreciation Rates for Public Service Properties, by J. C. Henriques. Electric Review, June 19, 1920. p. 1028. 1 page.

In discussing the question of depreciation rates for public utility properties, the writer says:

"Accounting practice recognizes two general methods of applying depreciation: one by applying a constant annual percentage on the original cost of the property, and the other by applying a constant or variable annual percentage on the present or depreciated value. The first has the advantage of simplicity and of providing a uniform coefficient to apply to the cost of the output, or service rendered. The second has the advantage of greater precision, representing the actual sale value of the property at any given time, and provides for writing off, if desired, a large proportion of the cost of equipment in the first few years, this representing the great decrease in value as the article purchased new becomes an item of used or second-hand equipment. \* \* \*

"The present percentage rates of depreciation used by public service commissions are as follows:

	Depreciation per year, %
General structures .....	2 to 4
Power-plant buildings .....	2 to 4
Steam engines and generators.....	5
Accessory electric power-plant equipment.....	5
Sub-station buildings .....	2 to 4
Sub-station equipment .....	5
Poles and fixtures.....	8½
Transmission system .....	5
Transformers .....	5
Meters of all kinds.....	5½ to 8½

"In selecting depreciation rates for any plant it is necessary to take into account the condition of the plant as affecting its value at the time the depreciation rates are put in operation. If the plant is taken at its new value at the date of construction the present value will be obtained by applying a percentage rate equal to the annual depreciation rate multiplied by the number of years since the building or equipment was new. If, on the other hand, the present value of the building is obtained by appraisal, the depreciation rate should be set higher because of the fact that the building is no longer new. At present, with the recent rapid increase in all values, an item of equipment may be worth considerable more than it was when new, and with the probability of the greater decrease in prices during the coming few years the depreciation rate may well be set considerably higher than warranted by the expected life of the building or equipment, so as to give a true value to the property during the years of decreasing prices.

## COURT DECISION REFERENCES

## 132—Protection from Competition

Piedmont Power and Light Company, et al. v. Town of Graham, et al. Decision of the United States Supreme Court. May 7, 1920. 40 Supreme Court Reporter 453.

Two appeals are made from the District Court of the United States for the Western District of North Carolina to review decrees dismissing complaints in suits to enjoin town officials from granting an electric light and power franchise, and to enjoin the grantee from using the town streets.

In dismissing the appeal for want of jurisdiction, the Supreme Court says:

"The grant to the appellant is set out in full in the bill, and plainly it is not one of exclusive rights in the streets. The attempt to derive an exclusive grant from the declaration, in the paragraph of the ordinance relating to the trimming of trees, that 'said town of Graham hereby warrants that it will, by its proper authorities, provide for the full and free use of its streets, lanes,' etc., is fatuous and futile. Grants of rights and privileges by a state or municipality are strictly construed, and whatever is not unequivocally granted is withheld—nothing passes by implication. Knoxville Water Co. v. Knoxville, 200 U. S. 22, 34, 50 L. ed. 353, 359, 26 Sup. Ct. Rep. 224; Blair v. Chicago, 201 U. S. 400, 471, 50 L. ed. 801, 830, 26 Supt. Ct. Rep. 427; Mitchel v. Dakota Cent. Teleph. Co. 246 U. S. 396, 412, 62 L. ed. 793, 801, 38 Sup. Ct. Rep. 362. The grant to appellant not being an exclusive one, the contention that competition in business, likely to result from a similar grant to another company, would be a violation of appellant's contract, or a taking of its property in violation of the Constitution of the United States, is so plainly frivolous that the motion to dismiss for want of jurisdiction, filed in each case, must be sustained. David Kaufman & Sons Co. v. Smith, 216 U. S. 610, 54 L. ed. 636, 30 Sup. Ct. Rep. 419; Toop v. Ulysses Land Co. 237 U. S. 580, 59 L. ed. 1127, 35 Sup. Ct. Rep. 739; Sugarman v. United States, 249 U. S. 182, 63 L. ed. 550, 39 Sup. Ct. Rep. 191."

## 226.2—Extension of Service

New York Public Service Commission, First District v. Kings County Lighting Company. Decision of the New York Supreme Court. June 21, 1920.

The Kings County Lighting Company announced on March 8, 1920, that it would be impossible to make any additions to its existing mains, setting forth as the reason the fact that it could not finance these extensions. Furthermore, it was pointed out that no relief was in sight and there was no likelihood that there would be any change in the situation.

One of the first acts that ensued was that the Public Service Commission held a hearing and investigated conditions. Before the inquiry was completed, an order was issued requiring the company to take on all consumers.

To prove its good faith in the matter, the Kings County Lighting Company attempted as best it might to comply with the order, but conditions quickly proved that its contention was right and it could not comply, whereupon the Public Service Commission sued out a writ of mandamus.

The Supreme Court of New York State appointed a referee, exhaustive hearings were held, consumers were heard and the company records produced. In announcing that he would dismiss the case against the Company, the referee stated: "I will find that the lighting company has not the money or the immediate assets available belonging to it nor the resources by which it can borrow money to comply with the order and that they have not now a plant which is adequate for the work that would be required by compliance. Case dismissed."



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No. 15

# RATE RESEARCH



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## Rate Research

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No. 15

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# Rate Research

Vol. 17

New York, N. Y., July 8, 1920

No. 15

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### PENNSYLVANIA

#### 132—Protection From Competition

Alexander J. Strathie v. Bucks County Electric Company, Complaint Against Discontinuance of Service. Decision of the Pennsylvania Public Service Commission, Ordering Service Reinstated. May 4, 1920.

The complaint in this case is against the enforcement of a rule of the respondent company which provides that: "The customer will not use on the above premises any electricity, except that furnished by the Company \* \* \* without the written consent of the Company."

From the testimony it appears that the complainant was a user of electricity furnished by the respondent at his drug store and residence, the current being used for lighting and for driving a small motor connected with his soda water fountain. The landlord of the complainant installed a small lighting system, and the complainant secured a portion of his supply from this source, making use of the respondent's service whenever that of the landlord proved to be inadequate and insufficient. Upon being informed of this, the respondent discontinued its service, and refused to continue it on the ground that the complainant was violating the rule above quoted.

The respondent contends that its rule is just and reasonable, and is necessary in order to prevent a practice by which the consumer can avail himself of the respondent's facilities for securing service which it is expensive to render, while he uses a competitor's facilities for the balance of his requirements, which can be met at a low cost, because they demand a comparatively small investment. It protests that it should not be called upon to furnish standready service to be used to supplement its competitor's inadequate service, and that its rule is designed to eliminate an unfair competitive condition and bring to the respondent the profitable, as well as the unprofitable, portion of the complainant's business.

The Commission says:

"We are unable to agree with the contentions of the respondent in this case, in so far as they would accomplish its purpose by the en-

forcement of the rule quoted; and are of the opinion that a rule which requires a customer not to use any electricity except that furnished by the utility is unjust and unreasonable. The utility may adopt rates which will secure it an adequate and reasonable return for the service which a particular class of customers demands; but it cannot refuse its service simply because the customer does not purchase all of his electricity from it. An order will, therefore, be issued, directing the respondent to eliminate the rule complained of from its tariffs, and to resume its service to the complainant on or before June 1, 1920."

### DISTRICT OF COLUMBIA

#### 630—Cost of Supplies

Washington Gas Light Company and the Georgetown Gas Light Company, Application for Authority to Increase Gas Rates. Decision of the District of Columbia Public Utilities Commission, Granting An Increase. May 29, 1920.

By the terms of its order number 314, issued March 15, 1919, this Commission increased the rate to be charged by the Washington Gas Light Company and the Georgetown Gas Light Company for gas to private consumers in the District of Columbia from ninety cents to ninety-five cents per one thousand cubic feet. The order provided that this increased rate should apply to all gas furnished from March 20, 1919, to September 20, 1919. On September 19, 1919, by order number 341 the Commission authorized a continuance of the ninety-five cent rate for a six months period to end April 1, 1920. On March 25, 1920, the Commission issued order number 369 continuing the rate of ninety-five cents for a further period of two months, in order to enable the gas company to negotiate contracts for the furnishing of gas oil for the ensuing year or to obtain definite information as to the probable price to be paid therefor, after June 1, 1920, when its supply of oil, covered by its then existing contracts, would be exhausted.

On May 7, 1920, the Washington Gas Light Company for itself and the Georgetown Gas Light Company filed its petition with this Commission stating that it was able to obtain the necessary quantity of oil from only one company and then only for one month at a price of  $12\frac{1}{2}$  cents per gallon, an advance of  $6\frac{1}{2}$  cents per gallon over the price at the date of the issuance of order number 341, and an increase of 6 cents per gallon over the average price for the year ending May 31, 1920. The company asks that a base rate for gas be established by the Commission, based upon a cost of  $7\frac{1}{2}$  cents per gallon for gas oil, and that the selling rate fluctuate each month with the fluctuating price of oil.

For the ensuing year the company asks that the price of gas be fixed at \$1.08 when the price of oil is  $7\frac{1}{2}$  cents per gallon, and \$1.30 when the price of oil is  $12\frac{1}{2}$  cents a gallon, the rates to fluctuate from month to month depending upon the price of oil.

The Commission says:

"If there were any real competition in the oil market and the purchases were made under the supervision of this Commission, some advantages would result from the adoption of a fluctuating rate for gas dependent upon the price of oil, but with practically only one company in a position to furnish oil, the Commission believes it would be prejudicial to the public interest to adopt a fluctuating rate. In lieu thereof it proposes to fix rates for a period of three months only and to base those rates on the price which the company will have to pay for oil for the month of June, it being impossible to predict from the available evidence whether the price for the other two months of the three-months period will be higher or lower.

"The greatest increase in the cost of manufacture of gas is occasioned by the increased price of oil. Four gallons of oil are required to produce one thousand cubic feet of gas and therefore the increased price of oil from  $6\frac{1}{2}$  cents to  $12\frac{1}{2}$  cents a gallon accounts in itself for 24 cents of the additional cost of each thousand feet of gas sold.

"The rates suggested by the company are computed on the assumption that 7 per cent is a reasonable rate of return. While the Commission does not question the reasonableness of this rate in normal times, yet it feels that during the present reconstruction period a rate of 6 per cent will not be unjust to the company.

"The proposed increase of \$418,000.00 for materials and supplies and working capital has been determined by the same methods used by the Commission at the time of its finding of the fair value of the petitioner's property in 1916, and is therefore allowed as a just and reasonable increase.

"The proposed increase in the amount set aside for maintenance and general amortization, an increase from 7 cents to 11 cents per thousand feet of gas sold, is believed to be excessive. For the purposes of this rate case it is believed that no injustice will be done the company if 9 cents per thousand feet is set aside to cover both maintenance and general amortization. \* \* \*

"The Commission has given consideration to the establishment of a wholesale price to large consumers. The number of large consumers in Washington is limited, but as the cost of furnishing service to such consumers is undoubtedly less than in the case of small consumers,

it is believed that they should have the benefit of a lower rate. In the judgment of the Commission these wholesale rates should apply not only to large consumers within the District of Columbia but also to the three distributing gas companies in Maryland and Virginia that obtain their supply of gas from the Washington companies. It has been alleged that to grant lower rates to large consumers would correspondingly increase the rates to the small consumers, but an analysis of the business of the last year shows that the adoption of wholesale rates which are applicable without as well as within the District will serve to increase rather than decrease the revenues of the companies. In other words, if the large consumers in the District have been overcharged in the past, the large consumers without the District have been undercharged to a greater extent. \* \* \*

"These rates can be applied only to gas furnished to private consumers as the price paid by the United States and the District of Columbia has been fixed by statute at 70 cents per thousand cubic feet. The present large increase in the price of gas, necessitated almost wholly by the recent increase in the price of oil, serves to emphasize the disparity between the rates paid by the private consumers and those paid by the United States and the District of Columbia. An even greater disparity exists in the case of street and park lighting, as evidence before the Commission shows that the companies receive for gas so furnished only 31 cents per thousand cubic feet, which is 69 cents per thousand feet less than the lowest wholesale rate herein established. If there were no disparity between the rates to these two governments and to the general public the rates herein established could be reduced by approximately  $4\frac{1}{2}$  cents per thousand cubic feet without reducing the earnings of the gas companies."

#### 720—Rate Schedules

The Commission authorized the Washington Gas Light Company and the Georgetown Gas Light Company to charge consumers, other than the United States and the District of Columbia, in accordance with the following schedules:

##### Rate

- \$1.25 per 1,000 cubic feet for less than 100,000 cubic feet consumed per month.
- \$1.20 per 1,000 cubic feet for 100,000 cubic feet and less than 300,000 cubic feet consumed per month.
- \$1.15 per 1,000 cubic feet for 300,000 cubic feet and less than 500,000 cubic feet consumed per month.
- \$1.10 per 1,000 cubic feet for 500,000 cubic feet and less than 750,000 cubic feet consumed per month.
- \$1.05 per 1,000 cubic feet for 750,000 cubic feet and less than 1,000,000 cubic feet consumed per month.
- \$1.00 per 1,000 cubic feet for 1,000,000 cubic feet or more consumed per month.

**Delayed Payment Penalty**

If any private consumer of gas shall not pay monthly any gas bill within ten days after the same shall have been presented, the gas company may charge and collect from said consumer ten (10) cents additional for each one thousand (1,000) cubic feet of gas represented by said bill, as now authorized by law.

**WISCONSIN****226.2—Extension of Service**

Wisconsin Power, Light & Heat Company, Central Wisconsin Utilities Company, Wisconsin Valley Utilities Company and the Mineral Point Public Service Company. Proposed Rules for Electric Rural Extensions. Decision of the Wisconsin Railroad Commission, Approving the Rules as Filed. May 17, 1920.

In approving the proposed rules for the extensions of electric service to rural districts, the Commission says:

"For the past year or more, there has been an increasing demand for rural electric service. On account of the comparatively large investment per consumer and the resulting high maintenance, depreciation and taxes, as well as the comparatively large transformer and line losses, and the inconvenience of inspection, repairs and meter readings, many utilities have been reluctant to engage in rural business. Some companies, which have taken on rural consumers, have found that the business resulted in a considerable loss, and have appealed to the Commission for relief in the form of a rate increase.

"When contracts, either written or verbal have been entered into between a utility and its rural consumers and when all or part of the construction cost of the extension required to serve such consumers has been advanced by the consumers the necessity for a rate increase should be very urgent before the Commission would be justified in authorizing any rate higher than that specified in the contract.

"It is therefore important that a utility develop its rural business on such a basis that it will be self-supporting within a reasonable length of time and will impose no undue burden on the urban consumer.

"The nature of rural business is such that the fixed charges, losses, and operating expenses are much greater than the same items for an equivalent income from urban business. It is quite possible that the cost of rural service might, with the adoption of high standards of construction, in many cases become prohibitive. On the other hand the connection of inadequate or unsafe construction to the transmission or distribution systems of a utility will introduce a hazard to the entire service. It therefore appears that the adoption of minimum standards required by the Commission's rules for the safe construction and operation of electric systems will safeguard the service of the utility and at the same time involve no unnecessary expenses for rural consumer.

"It has been contended that a utility should finance and construct all rural extensions and charge a rate commensurate with the cost of service. This plan has many advantages as it eliminates all questions raised because of the consumer being required to pay the cost of construction on public highways which, to comply with the law, shall be the property of the utility. It eliminates many questions as to the basis on which additional consumers should be connected, or the lines extended or reinforced, and the necessity of segregating the property paid for by consumers in valuations for rate making, securities issued or sale.

"Practical consideration at the present time makes this method of financing impractical for most utilities. \* \* \*

"To encourage the development of rural electric service, eliminate the present reluctance of many utilities to engage in this class of business, and enable rural districts to secure service, the business must not only be permitted to earn the same rate of return that is considered reasonable in the urban portion of the utility's business, but the utility must be permitted to make terms as to financing which will make possible the immediate investment of considerable sums of money in rural extensions without taxing the resources of the utility for securing capital.

"It is quite likely that under present conditions a utility would be forced to pay a higher rate of interest to secure funds for financing an entire program of rural extensions than the average rural consumer would be required to pay to finance the comparatively small amount represented by his individual share. As this interest rate would be reflected in the rate paid for service it is to the advantage of all concerned that the required funds be secured at as low a rate as possible. \* \* \*

"Some utilities have attempted to overcome the difficulty of financing rural extensions by a plan whereby the consumer is required to advance the cost of the line and receive a refund of all or part of the monthly bills for service until the amount advanced has been refunded. This plan has the advantage of eliminating to some extent the question of financing and permanence of the business.

"It does not possess the advantages which result from a high initial charge and comparatively low rates as the rates under this plan would be but slightly less than they would be in case the utility financed the extension.

"As the utility should be allowed only an adequate return on the investment including a proper allowance for depreciation, this refund plan would either keep the utility from part of its legitimate return or it would be necessary from time to time to market securities to take care of the purchase of the line from the consumer on a partial payment plan.



"In many cases particularly where rural lines are served by municipally owned utilities the utilities have been unwilling to accept the obligations incident to the ownership of the rural lines even though such lines be turned over to them at no initial cost. In several such cases it has been necessary for the group of rural consumers to organize a corporation, purchase energy at a wholesale rate, and engage in the utility business to comply with the law. Such organizations are ordinarily formed with no idea of profit, but merely as the only means of securing service. This plan is not to be recommended for many reasons.

"It forces the rural consumer into a business about which he knows little and burdens him with the expense of forming and maintaining an organization and the compilation of numerous comparatively unimportant, but legally necessary, reports. It places the responsibility for maintenance of lines and equipment in inexperienced hands with the consequent liability of accident to workmen and public. The limited liability of the small corporation is such that its resources would in many cases be severely taxed to settle even a nominal accident claim and in many cases a claim of any importance could not be satisfied by the market value of the physical assets of the corporation.

"There is little likelihood of such an organization being able to secure service at any appreciably lower rate than that provided by the proposed rules if proper maintenance is provided and proper accounting systems adopted, and some cases which have recently come to our attention the rates worked out at the beginning of the enterprise but are already proving inadequate notwithstanding the fact that no depreciation is being provided.

"The proposed rules provide no method of apportionment of the construction cost of the line among the various consumers. This is frequently one of the most difficult points to settle in connection with the promotion of a rural extension. While in the final analysis strictly justice probably demands that no consumer should be required to pay more as a member of a group than he would be required to pay if he were to be served under the rules as an individual it is our opinion that a rural extension should, as is apparently the intent of these rules, be considered as far as practical as a community enterprise in which all will benefit equally.

"It has been suggested that one or more individuals may feel financially unable to meet his share of the construction cost at once and that a partial payment plan be developed to handle such cases. While the existence of such an alternative might tend to hamper the financing of some extensions, it is greatly to the advantage of both consumer and utility that the rural line reach its ultimate development as early as possible. Such a plan might be of advantage in obtaining this end.

"The subject of electric rural extension is so involved that a rule to adequately cover all points which may arise is practically out of the question and it is to be expected that much development may be anticipated along these lines but the proposed rules appear to cover the more important points, and the application of such rules will undoubtedly furnish much data for the further study of the problem."

## UTAH

### 300—Investment and Return

Kansas Light, Heat & Power Company, Application for Authority to Increase Rates. Decision of the Utah Public Utilities Commission, Granting the Application. June 21, 1920.

Mr. G. W. Butler, doing business under the name of Kansas Light, Heat & Power Company, filed an application with the Commission for authority to increase the charges made for electric energy as follows:

	<i>Present</i>	<i>Proposed</i>
Residential and Commercial Lighting, per kilowatt-hour...	11c	15c
Minimum Charge, per month.....	\$ 1.00	\$ 2.00
Kansas High School, per kilowatt-hour.....	11c	15c
Minimum Charge, per month.....	\$ 2.00	\$ 4.00
Meter Deposit .....	\$10.00	\$10.00
Connection Charge .....	\$ 2.50	\$ 3.50

The operating expenses for the year 1919, in addition to the labor of Mr. Butler, exceeded \$50 per month, according to petitioner. The owner, Mr. Butler, assisted by his wife and family, operate the plant, attend to reading meters, collecting bills, etc. Mr. Butler states that in addition to the operating expenses, he should be entitled to \$125 per month salary, as manager and operator of the plant, which would make the annual operating expenses, based on 1919 figures, \$2,100, while revenues, based on the period January 12, 1920, to May 12, 1920, would be \$1,564.80, a deficit of \$535.20 per annum.

The plant has been operated for a number of years and has depreciated approximately 50 per cent, for which no provision has been made. Earnings in the past have not been sufficient to take care of depreciation. Under present earnings, after allowing for operating expenses and for depreciation, a substantial deficit will be incurred without any return whatever on the investment.

The proposed increase should yield petitioner an additional revenue of approximately \$547.68, which will only make the total revenue exceed operating expenses \$12.48 per annum, leaving practically nothing for depreciation. The Commission says:

"There is nothing to indicate that in years past the earnings of the plant have been dissipated, resulting in the present poor condition,

but rather that maintenance has been deferred because of inadequate revenue.

"The Commission, in this case, cannot attempt to fix rates which would yield proper return on investment and provide for adequate depreciation, as such rates apparently would be prohibitive and result in a decrease in number of users, and a consequent reduction in petitioner's revenue.

"The increased rates prayed for will afford a measure of relief and doubtless enable petitioner to make some much needed improvements in the service. Meters should be installed in such residences as are at present without them, and which are now paying the minimum charge only, in order to avoid discrimination, as well as assure the petitioner his lawful charges.

"It is proposed to increase the present minimum charge, 100 per cent, making it \$2.00 for residential consumers, and \$4.00 for the High School. This is a very marked increase and one which under ordinary conditions might not be permitted; but in the present case it appears to be justified. Each consumer connected represents an investment upon the part of the Company, and furnishes a convenience for which the consumer should be willing and prepared to pay, and the proposed increase does not appear unreasonable in the present case.

"Petitioner must look to improved service and consequent increased consumption of energy, to enable him to make a return upon his investment, with the increased rates granted in this case."

## RHODE ISLAND

### 788—Service Rules

The T. F. Donahue Company v. Providence Telephone Company, Complaint alleging the Company Discontinued Its Service Without Reasonable Justification. Decision of the Rhode Island Public Utilities Commission, Dismissing the Complaint. June 4, 1920.

The schedule of rates and the rules and regulations of the Providence Telephone Company require the payment of regular exchange service charges in advance. For a period of more than a year the complainant refused to comply with the rule requiring such payment in advance. After the Company had repeatedly urged the complainant to comply with the rule, which he refused to do, his service was discontinued.

The Commission says:

"The Commission is of the opinion that the rule of the Company requiring such payment in advance is reasonable.

"The utility is in an entirely different position from the ordinary tradesman. The tradesman sells only to whom he pleases, and can

exercise his unlimited discretion as to whether he will require cash on delivery or whether he will deal at all with a person. The utility is obliged to deal with all who make demand upon it for service within the area of its operations, and comply with its reasonable regulations, regardless of their financial responsibility.

"A regulation which secures the utility against losses from bad bills, or tends to reduce the amount of such losses is alike a benefit to the utility and to its consumers who pay their bills.

"The leading case with reference to a telephone utility is *Southwestern Telegraph and Telephone Co., vs. Danaher* (239 U. S. 482, P. U. R. 1915D, 571), in which case the court said: 'It is uniformly held that a regulation requiring payment in advance or a deposit to secure payment is reasonable.'

### **COURT CASES**

#### **300—Investment and Return**

*Pacific Gas and Electric Company v. City and County of San Francisco, et al*, Report of H. M. Wright, Standing Master in Chancery, Filed March 2, 1920. 156 pages. (Continued from 17 Rate Research 186-190, 199-205, 218-223.)

Defining the term franchise as a special privilege conferred by the State, which is not of common right among citizens generally, plaintiff may be said to have three franchises: the franchise to be a corporation, the franchise to collect tolls for public service, the privilege to which is appurtenant the right (itself a franchise) of eminent domain, and the franchise to occupy the public streets of the municipality. All these franchises are property, and within the protection of the constitution. No value is here claimed for the first or second types of franchise. The corporate franchise, it would seem, would not have value beyond the cost of obtaining it, since it is open to all at all times. The value of the franchise to take tolls, as the sole justification for building the works, would seem to be embodied in the appraisal already affected. If the business were unregulated and the right exclusive there might be conceived to be an additional value, which, perhaps, would be reflected in the going value allowance.

The report says:

#### **314.22—Franchises**

"The constitutional and statute law regarding franchises was modified by changes taking effect in 1911. Since that time the right to grant franchises of the class under discussion, the easement in the streets, has rested in the municipalities; while the franchise to do business and collect charges as a public utility depends upon the grant by the State Railroad Commission of a certificate of public conven-

ience and necessity. (*Oro Electric Corporation v. R.R. Commission*, 169 Cal. 466.) This certificate, if granted, may be limited in scope in the commission's discretion, and be issued on terms and conditions. See Sec. 50c, Public Utilities Act of 1911. By Section 52b of the act last mentioned no franchise of any character may be capitalized in excess of the amount, if any, paid by the granting authority as a consideration therefor. The city of San Francisco, by an ordinance passed October 27, 1913, (Exhibit 96), granted an easement in the streets for gas or electric conduits to anyone, under conditions not of interest here as to opening of pavements; providing also that in rate-fixing proceedings and in case of condemnation brought by the municipality no value should attach to the franchise; also, that the rights and privileges granted by the ordinance should not be transferred except by consent of the Board of Supervisors of the city. \* \* \*

"In examining these contentions we may examine the theory upon which plaintiff estimates a value for its right in the streets of \$1,476,000. \* \* \*

"So far as my attention has been directed to the law, the old and new franchises are, equally, perpetual, irrevocable and conferred without cost. The requirement under the new laws that the franchises shall not be capitalized or valued confers no value by comparison on plaintiff's franchise, for it had none before. The requirement now that the commission must issue a certificate of public convenience and necessity bears rather on plaintiff's franchise to operate, for which a value is not here claimed; but even in that regard the requirement tends rather to protect plaintiff from loss of its capital through new competition than to add value to it. The only objection I can see to the easement given by the city ordinance is the requirement that it cannot be transferred without the consent of the Supervisors, a point not discussed in the argument. We may assume that in the event of sale, the Supervisors would follow the action of the State Railroad Commission, whose approval is necessary to any sale. If the chance that they would not approve affords greater comparative desirability to the older franchise, I know of no way to express this slight advantage in money value.

"I conclude that plaintiff's franchise has no separate or additional value beyond the sum of values of its physical property, together with its going value already recognized in the foregoing appraisal.

"What has been said concerning franchise values applies to the situation here shown by the evidence. If plaintiff's franchise were exclusive, if the law now conferred rights for a limited term, or burdened with payments to the municipality, in such differing circumstances there might be something to consider as to an additional value.

"I lay no stress on the fact that plaintiff's franchise cost nothing. If it had cost a great deal, and an equally desirable franchise could be now obtained for nothing, it would not now be valued. If the city had given this plaintiff its necessary lands, those lands would be valued for a return. But if all utilities were as a settled policy given like benefits, no such gifts would be included in the rating base. The absence of value under both the old and the new law is due to the fact that the rights are obtainable by all on substantially the same terms.

"I have preferred to discuss this question without reference to decided cases because, frankly, I do not think the cases which have dealt with the value of franchises as an isolated question are likely to be of much assistance. It is only with the development of the law regarding valuation of public utility properties as a whole in litigation like this that we have begun to understand the principles of valuation. I have read the cases cited. Sometimes the valuation is of an exclusive privilege; sometimes it covers what we have called going value. Counsel refers to my judicial knowledge that franchises like this one are assessed at large sums and taxed specially; and I will assume this is so without being actually aware of it. I should say that such assessment and taxation is wrong, and yet such wrong may be settled by decision beyond repair. Sometimes the court may refer to the franchise as of 'great value' and a 'principal basis of credit.' (*Owensboro v. Cumberland Co.*, 230 U. S. 70.) Justice Lurton ruled that it could not be taken by municipal action, and I think meant by the words quoted that it was the legal basis maintaining the value of the company's plant and business, which would be destroyed or reduced to scrap value if the right to operate were taken away. That does not imply an additional value in the franchise alone.

"In *Monongahela Navigation Co. v. United States*, 148 U. S. 312, the government sought to condemn the rights of the company in a river where it had therefore taken tolls for passing through locks and dams that made navigation possible, at the value of the lock and dam-structures alone. The Supreme Court held this could not be done without paying also for the franchise. It does not appear whether the tolls had been fixed by the state or to what extent the total net earnings afforded a return beyond interest and profit on the value of the structures alone. The implications of the decision are that there was or would be such a surplus. To the extent that the decision recognizes the value of such a surplus in the past and present, it is a recognition of what I prefer to call 'going value'; to the extent that it recognizes potential increase of such surplus in the future, it recognizes not only the element of going value, here in an unregulated business, but also the value of an exclusive franchise. The underlying principle of the decision that 'the value is not determined by the mere cost of construction, but more by what the completed

structure brings in the way of earnings to its owner' seems to be the rule of what the traffic will bear. That rule, properly understood, may be the true economic law, but it must be recognized that current decisions of controlling authority do not stand on that basis. The case is no authority for allowing an additional value here.

"Neither is *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, in point here. Prior to 1884 seven gas companies operated in New York city under franchises to use the streets granted without cost. In that year a statute allowing consolidation of corporations was enacted, providing for an agreement among the various boards of directors embracing the proposed capital and the number of its shares, the capital not to be more 'than the fair aggregate value of the property, franchises and rights of the several companies to be consolidated.' Six companies consolidated in November, 1884, under the act. In the directors' agreement the value of all the franchises was fixed at \$7,781,000, and stock of the new company was issued in exchange for the old stock, covering the full values agreed upon, including the value of the franchises. Prior to the consolidation the companies had been free from state regulation of rates and had earned and paid large dividends. A legislative committee, appointed in 1885 to investigate the consolidation, reported that 'the valuation of \$7,781,000 for the franchises was not more than their fair aggregate value.' They said: 'A law was on the statute books that virtually prohibited the laying of any more gas pipes in the streets. The gas companies had an agreement among themselves fixing the price of gas at a figure that paid these dividends. The people were paying this price, as they had in the past, without objection or protest. This price may have been too high and the dividends were excessive, but they were not illegal, and the valuation of the franchises computed upon these dividends and that state of facts cannot be called a violation of a law that expressly authorized it to be done, unless such valuation was too high.' The lower court and the Supreme Court agreed that where a law thus existed providing for a valuation of franchises where the valuation had been made and always recognized as valid, both by state authorities and the public, and where stock had been issued covering that value 'and had been largely dealt in for more than twenty years past on the basis of the validity of the valuation and of the stock issued by the company,' the valuation of the franchises should be upheld and allowed in the capital entitled to return in a rate-fixing proceeding. The Supreme Court said, however, that the case was founded 'on its own peculiar facts, and the decision thereon can form no precedent in regard to the valuation of franchises generally.'

"I think this statement of the Consolidated Gas case is sufficient, without more, to show that it forms no precedent to govern the facts of the case at bar."

*(To be continued)*

## REFERENCES

## PUBLIC SERVICE REGULATION

## 252—Commission Annual Reports

Arizona Corporation Commission, Seventh Annual Report for the Year Ending June 30, 1919.

The decisions of the Arizona Commission in formal and informal cases, rendered during the year ending June 30, 1915, are given in the seventh annual report of this Commission. Statistics for the companies under the Commission's jurisdiction are given for the same period.

## COURT DECISION REFERENCES

## 224.5—Rates Fixed by Contract

Public Service Commission, Second District, v. Pavilion Natural Gas Co. Decision of the New York Supreme Court, Special Term. April, 1920. 182 New York Supp. 55.

This is a summary proceeding under section 74 of the Public Service Commissions Law (Consol. Laws, c. 48) to have the court summarily inquire into the facts and to command the respondent, the Pavilion Natural Gas Company, to cease charging for its gas more than the maximum rate allowed in any municipal franchise agreement under which it has been distributing natural gas in various villages and towns in the counties of Genesee and Livingston. In some of the villages and towns the franchise rate is 45 cents per 1,000 cubic feet, and in others it is 40 cents. Under the franchise agreements a right was given to respondent to lay its pipes in the streets and public places of the village or town upon the condition, amongst others, that the charge for gas to the inhabitants thereof should not exceed the certain rate fixed.

The Court says:

"The commission has been empowered to determine and prescribe the just and reasonable rates and charges to be enforced in a given case (Public Service Commission Law, 66 Subd. 5), and in fixing rates is required to have regard to a reasonable return upon the capital actually expended, and to the necessity of making reservations out of income for surplus and contingencies (Id. sec. 72). In making its order of April, 1920, the commission has not attempted to do this, but, on the contrary, has attempted, in effect, to enforce specific performance of the franchise agreements. This it cannot do, directly or indirectly, except after a hearing and determination on the merits that such rates are the just and reasonable rates to be charged.

"It is a body of limited powers, and can only do that which the statute specifically prescribes it may do. *People ex rel, N. Y. Steam Co. v. Straus*, 186 App. Div. 787, 174 N. Y. Supp. 868. The order of April 1, 1920, was a determination reached without evidence to sustain it, and must be held to be a nullity. In fact, the counsel for the commission seems to concede that the order is of no greater force and has no more basis of authority than is warranted by the assumption of the violation of law contemplated in his argument here, namely, that there is a violation of the franchise, and that the rate is not effective until ordered by the commission. Having found to the contrary on that proposition, I see no way of sustaining the order of the commission as a valid and enforceable order.

"The proceeding is therefore dismissed."



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# RATE RESEARCH



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# Rate Research

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No. 16

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### WASHINGTON

#### 224—Rates

The Public Service Commission of Washington v. Puget Sound International Railway and Power Company. Investigation of the Company's Rates. Decision of the Washington Public Service Commission, Ordering the Company to File Reduced Rates for Light and Power. June 18, 1920.

The Public Service Commission on its own motion, made an investigation of the Puget Sound International Railway and Power Company's rates.

The respondent Company is a corporation and a public service company other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for its sale to others. The company owns, operates and manages an electric plant for the generation, transmission, distribution, sale and furnishing of electricity for light and power for hire within the State of Washington and in particular in and about the City of Everett.

On December 31, 1911, the Commission fixed the value and rate base of the light and power systems of respondent (as distinguished from and not including the water system and railway system) at \$442,000.00, which with net additions and betterments to December 31, 1918, of \$58,851.58, makes \$500,851.58, which we will use in this cause as the value and rate base of the light and power system. This amount \$445,642.00 should be apportioned to light and \$55,209.00 to power.

In the year 1918, after paying all operating expenses and taxes and allowing for depreciation at 3.05 per cent, and based upon the value of \$500,851.00, the combined light and power system gave a net rate of return of 15.13 per cent. For the same period and after making the same allowances and based upon a value of \$55,209.00, the net rate of return from power was 43.60 per cent; that for the same period and after making the same allowances and based upon a value of \$445,642.00, the net rate of return from light was 11.61 per cent.

The Commission alleges that the rates now charged by respondent for light and power, singly or combined, are unjust, unfair, unreasonable and more than sufficient. The Commission holds:

"That the respondent should within ten days from the date of this order file with this Commission a reduced schedule of rates applying to all light and power service, which will yield the company an annual net rate of return of eight per cent upon the value of the light and power systems, singly and combined, fixed by the Commission as of December 31, 1918, with net additions and betterments of June 1, 1920; and that the respondent within said time file with this Commission a sworn statement showing the net additions and betterments to its light and power properties, singly and combined, since December 31, 1918, and to June 1, 1920.

"That any and all contracts in conflict with the rates to be so filed or to be fixed by the Commission should be terminated and set aside; that all franchises between the City of Everett and the respondent, or its predecessors, in so far as they conflict with said new schedule of rates, should be terminated and set aside.

"That the respondent should within twenty days from the date of this order, file with the Commission copies of all contracts in conflict with said new schedule; that the City of Everett should within twenty days from the date of this order file with this Commission certified copies of all franchises in conflict with said new schedule."

In its opinion the Commission says:

"In this case the respondent has challenged the jurisdiction of the Commission to make an order affecting its rates for electric energy sold as power or for power purposes. It relies principally upon the case of *State ex rel. Public Service Commission vs. Spokane and Inland Empire Railroad Company*, 89 Wash. 599, which is commonly known as the 'Inland case.' The Inland case has been much discussed by counsel and considered in many utility cases coming before the Commission and the courts, and there has always been a wide difference of opinion as to the extent of its application. Members of this Commission have read and studied it many times. It has been, and now is, our opinion that it was not the intention of the Supreme Court in that case to exclude from the jurisdiction of the Commission power to fix rates under conditions as shown to exist here. What the court evidently had in mind was that the sale of surplus or dump power should not be considered a public use, but, one subject to any disposition the company might be able to make of it, and upon such terms as would be most advantageous to the company; that is, it had in mind that an electric company in the conduct of its business would have generating, transmission and distributing plant and facilities and electrical energy more than sufficient to care for its immediate public needs and demands and, that

this surplus might not be wasted, it could dispose of it at such rates and under such conditions as it saw fit, so that it would at all times have a surplus upon which it might draw as the public needs increased. We can see the logic of that position and believe that the following quotation evidences the mind of the court: 'That the sale of surplus power, or the difference between the ordinary requirement and the peak load by a corporation which does do a public service business, when such surplus is not in use, is only an incident to the public employment of which the law will take no notice.'

"As pointed out in the petition for a rehearing in the Inland case the denial of jurisdiction of this Commission to inquire into and regulate power rates places a serious handicap upon us, and it would be almost impossible for this Commission to fix just, fair and reasonable rates on other classes of service were we denied the right to adjust those rates with the rates for power, for as it appears in this case this company is earning 11.61 per cent upon its lighting business and 43.60 per cent upon its power business.

"The Supreme Court in many cases has considered the question and made distinctions between public and private uses, and in addition to the cases cited by counsel, the Commission has made an examination of practically every decision of our court bearing upon this question. In the case of *State ex rel. Harris vs. Superior Court*, 42 Wash. 660, the court uses this language: 'It must be admitted that many things are considered a public use now, that were not so considered a half or even a quarter century ago, and it may be, and it is probable, that in the not distant future many things which are now considered a private use, by the changing conditions and evolution of business, will of necessity become a public use.'

"We believe, that in so far as a business operated under conditions as that here, the time has arrived when such is, and should be considered, a public use and subject to regulation by this Commission.

"In the instant case we have a company purchasing electrical energy from another electric company and this power is by the purchasing company transmitted, distributed and sold to light and power consumers, and as shown in the findings, this company's operating expenses are about equally divided between power and light service, being \$97,000.00 and \$86,000.00 respectively. Its revenues from light and power are upon a basis of 60 per cent for light and 40 per cent for power, or \$169,000.00 and \$115,000.00 respectively, and the 1918 load in simultaneous maximum demand in kilowatts was 8,740 for light and 30,801 for power. This is not a new or temporary business, but one that has continued for several years, and will continue.

"Surely it cannot be said that this sale and use of power is an incident to the lighting business and a sale of surplus power only. To

our mind a distribution and sale of power in this case is as much the business of the company as the distribution and sale for lighting and should be given the same consideration and should be subject to the same regulation, and we so hold.

"We fail to see the distinction between electric energy sold to a householder for use in lighting his rooms and running his electric washer, the flat iron, the percolator, the chafing dish and other household uses, and electrical energy sold to a manufacturer using it to drive some power machine in his factory, for as the Supreme Court said in *State ex rel. Dominick vs. Superior Court*, 52 Wash. 196 (202), 'If in the end the property is devoted to a public use the mere agency or instrumentality through which that result is accomplished is a matter of no concern.

"It may have been true at one time, and perhaps at the time of the rendering of the *Inland* decision, that electrical energy used for power was insignificant and the demand very small as compared with that required for lighting and other public uses, but our experience has shown that that time is past and that the amount of electrical energy used for manufacturing and other similar purposes has now grown to be a substantial portion of most electrical companies' businesses.

"It occurs to us that there is as much public necessity now for furnishing power to run the machinery in a modern laundry as there is to run the washing machine or electric iron in the home."

## WASHINGTON

### 224—Rates

The City of Centralia v. North Coast Power Company, Complaint Against Increase in Rates. Decision of the Washington Public Service Commission, Fixing a Value on Company's Property as a Base For Rate Making. June 19, 1920.

In November, 1919, the North Coast Power Company issued its Tariff No. 6, naming and including among others the wholesale electric rates to the City of Centralia, which were fixed by a contract existing between the City of Centralia and the respondent. The Commission in its opinion says:

#### 225.1—Filing of Schedules

"The respondent in making its tariff effective on December 20, 1920, and in collecting the increased rates from the City of Centralia since that date, apparently assumed that the filing of its tariff with the Commission abrogated or superseded the contract rate.

"On March 22, 1920, our Supreme Court in the case of *State ex rel. Home Telephone and Telegraph Company of Spokane vs. Superior*

Court, Vol. 10, No. 8, Washington Advance Sheets, reaffirms its previous holding in the case of *State ex rel. Ellertson vs. Home Telephone and Telegraph Company of Spokane*, 102, Wash. 196, to the effect that before a telephone company (in that case) can charge a greater rate than that provided in a franchise or contract 'The Public Service Commission must have done more than merely receiving in its files a new schedule of rates. There must be affirmative action by the Commission relieving appellant (the company) of its contractual obligations to the users of its telephone service.'

"Section 43 of the Public Service Commission Act, chapter 117, Laws of 1911, cited by the court in those cases relates to rate contracts made by telephone companies and is practically identical with Section 34 of the same act relating to rate contracts of electrical companies.

"In part, the Court says in the *Ellertson* case, *supra*: 'The Public Service Commission not having acted upon the schedule filed by the appellant and not having directed "by order that such contract shall be terminated by the telephone company" the contract still continues in effect.'

"While it is true that in the *Ellertson* and *Home Telephone* cases, the Court had under consideration a franchise or contract made prior to the effective date of the Public Service Law and that the contract in the instant case was made subsequent to that effective date, we are unable to see that the statute makes any distinction between such contracts. Remington's Code, par. 8626-34, which is the section applicable to contracts with electrical companies, provides that nothing in the act shall be construed to prevent any such company from continuing to render service 'Under any contract or contracts in force at the date this act takes effect or upon the taking effect of any schedule or schedules of rates subsequently filed with the Commission as herein provided, at the rates fixed in such contract or contracts.

"Then follows a proviso empowering the commission, in its discretion, to direct a cancellation of any such contract. It seems clear to us that this section refers to contracts made before the commission act was passed and also to contracts made thereafter. 'Contracts in force at the date this act takes effect' must have been previously entered into, while contracts in force 'upon the taking effect of any schedule \* \* \* subsequently filed \* \* \*' may have been entered into after the act took effect. Respondent contends that this section refers only to contracts in existence prior to the Commission law, and which are still in effect upon the filing of a subsequent tariff. This may be what the law should say, but it is not what this section does say. The use of the disjunctive 'or' in the clause 'or upon the taking effect of any schedule,' etc., precludes such a construction. If the word *and* had been used instead of *or*, such an interpretation would be possible.

"We have studied the section with the utmost care, and are unable to escape the conclusion that it authorizes the utility to fulfill any unexpired contract for service at the contract rates unless the Commission in its discretion directs otherwise. Under this view of the statute, the Ellertson case and the Home Telephone case are conclusive that the contract under consideration must stand until an order has been entered by the Commission for the reason that the statute makes no distinction between contracts made before the Commission law took effect and those made thereafter.

"It is true that various sections of the Commission law prohibit unjust and unreasonable preferences and discrimination, and forbid the giving of service to one patron on different terms from those granted to other patrons under substantially similar conditions, etc., but does not the act contemplate that the Commission shall inquire into the circumstances surrounding each contract and determine from all the facts whether such contract is repugnant to such provision and, therefore, of a character which the Commission, in the exercise of a reasonable discretion, should order canceled.

"We have read the decisions cited by respondent from various states and the United States Supreme Court holding that the taking effect of a new tariff wipes out all contracts providing a different rate, and the doctrine is safe and wholesome, but it is not shown that any such decision is based on a statute exactly the same as ours. However, much we might desire to follow such a course, we are convinced that we cannot do so without ignoring the language of the law, nor has any reasonable interpretation of the statute been pointed out by which we can avoid the construction we have adopted.

"It is true that the section under discussion could express the meaning we have given it in fewer words, yet our interpretation gives effect to all the words employed.

"The contract fixed the rates in accordance with the tariff in effect at the time the agreement was made. The Public Service Act does not prohibit the making of a contract.

"A contract for services embraces more than the price of the service. A city or an industry in the exercise of business prudence desires to know definitely that some responsible concern is obligated to furnish its required power for a fixed period, and that it will not be disconnected at will and obliged to look elsewhere for current. The assurance of continuity is a valuable element for which anyone has a right to contract.

"Our interpretation of the statute would establish the just rule that a contract, made before or after the Commission law took effect, wherein the company solemnly obligates itself to furnish power for a term of years at a specified rate in harmony with its tariff then in effect, may not be brushed aside in thirty days without notice to the



patron by the mere filing of a tariff fixing a different rate, but that such a contract must stand until the Commission in the light of all the facts and in the exercise of a reasonable discretion, directs its cancellation.

"Section 54 of Chapter 117, *supra*, provides that whenever the Commission shall find upon complaint and after a hearing that contracts affecting rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, it shall determine just, reasonable, etc., contracts to be thereafter observed and enforced and shall fix the same by order. Here we have a contract affecting rates, which does not by its terms expire until October 1, 1920. Can it be said that by merely filing a tariff with the Commission, no notice of which was by the company given to the city, the other party to the contract, that that contract has been superseded by the tariff rates and that the time for measuring the maximum demand has been changed from fifteen to five minutes? We think not. Surely it was not the intention of the Legislature to permit the making of contracts which could be abrogated or set aside by one party only without notice and within thirty days after made.

"The reasonableness of the rates was the subject of the complaint and hearing, and Section 54 *supra*, as above stated, vests in the Commission the power to alter contracts affecting rates, by prescribing what the contract shall provide thereafter, that is after complaint, hearing and the making of the order.

"We have found that the rates named in respondent's tariff, which are higher than the contract rates, are not unreasonable nor discriminatory and that they should be charged by the respondent and paid by the city. These rates should replace the rates named in the contract and the five-minute period should replace the fifteen-minute period and they can only replace them by an order of the Commission. Such an order cannot be made effective so as to relate back to December 20, 1919, the date upon which the other portion of the tariff not relating to contract rates, did become effective.

"Any charges collected by the respondent prior to the effective date of the order in this case in excess of those chargeable under the contract, are illegal and should be refunded to the city."

## **COURT CASES**

### **300—Investment and Return**

*Pacific Gas and Electric Company v. City and County of San Francisco, et al.* Report of H. M. Wright, Standing Master in Chancery, Filed March 2, 1920. 156 pages. (Continued From 17 Rate Research 186-190, 199-205, 218-223, 236-239.)

In pursuing the rule that a public service company is entitled under the Fourteenth Amendment to a fair return on the fair present value of its

property used and useful in the public service, we have found what property was used and useful and its fair present value. As part of its fair return the necessary reasonable costs of operation, maintenance and taxes have been determined, and also the required amounts for reserves. There is thus left for determination the net return, the rate at which the capital should earn.

#### 340—Rate of Return

The plaintiff urges that this rate should be fixed at 8 per cent. The city contends that a net earning of 6 per cent is not confiscatory.

The Report says:

“In the earlier cases touching the constitutionality of legislation fixing rates for public utilities, the court emphasized so strongly the primary responsibility and consequent range of discretion of the legislative body that it refused to set aside the rates fixed if any compensation, however small, was shown. Thus in *C. & N. W. Ry. Co. v. Dey*, 35 Fed. 866, 879, decided in 1888, Justice Brewer said:

“The rule, therefore, to be laid down is this: That where the proposed rates will give some compensation, however small, to the owners of the railroad property, the courts have no power to interfere. Appeal must then be made to the legislature and the people. \* \* \* Compensation implies three things: Payment of cost of service, interest on bonds, and then some dividend. \* \* \* While by reducing the rates, the value of the stockholders' property may be reduced, in that less dividends are possible,—and that power of the legislature over property is conceded,—yet, if the rates are so reduced that no dividends are possible, and especially if they are such that the interest on the mortgage debt is not earned, then the enforcement of the rates means either confiscation, or compelling, in the language of the supreme court, the corporation to carry persons or property without reward. \* \* \* No legislature can directly or indirectly lay its withering or destroying hand on a single dollar invested in the legitimate business of transportation.”

“We may pass by the obvious contradictions in the language of the quotation. The value of property is the value of its uses. The Fourteenth Amendment provides for due process of law in case of taking by the state, and due process implies just compensation. If, then, a court will not interfere, provided, say, one-tenth of the just compensation for use of a railroad by the public is allowed, it is abdicating its solemn duty to enforce the Constitution as to the remaining nine-tenths of the value of that use, and permitting, therefore, a confiscation of nine-tenths of the money invested in capital assets of a business declared legitimate.

“*San Diego Water Co. v. San Diego*, 118 Cal. 556, decided in 1897, marks approximately the time when the courts began to realize their

responsibility to face and determine the issue of just compensation. The opinion of the court was written by Justice Van Fleet, now judge of this court, concurred in by two justices; but there were also three concurring opinions. The latter followed the formulae of the early cases. Thus Justice Garoutte said:

"This leaves a profit of \$25,000 upon the investment. To be sure, it is small \* \* \* not enough. \* \* \* Those are matters passed upon by the city in the exercise of a discretion granted by the constitution, and its decision as to the reasonableness of the amount of revenue to be derived by the company from the rates is conclusive upon the courts. While this sum is not enough upon this character of investment, still it is three and one-half per cent, and such return is a substantial profit. We mean it is so substantial that a court of equity, in view of the law of the land, cannot say that the rates are so unreasonable as to be confiscatory in character, and thus violative of any principle of constitutional law.' (Citing the Day case.)

"Justice Harrison, while disclaiming any authority in the judiciary to consider the reasonableness of the compensation allowed by the rates, referred to the fact that 3 per cent was more than the current interest on government bonds.

"In the majority opinion Judge Van Fleet said:

"But it is contended that the power of the court is at most to inquire whether some reward will be provided by the rates fixed and that if some reward, however small, is so provided, the court cannot interfere. We have been referred to dicta in some of the cases which do support that contention; but we are unable to agree with that conclusion. It is an elementary doctrine of constitutional law that the question of just compensation is a judicial question to be determined in the ordinary course of judicial proceedings; and construing article XIV of our constitution with section 14 of article 1 (as we think we are bound to do), we find no difficulty in holding that whenever the rates fixed by the council are grossly and palpably insufficient to furnish such a revenue as will afford just compensation within the rules above declared, redress may be had in the courts. Of course, every slight or conjectural deficiency will not justify an appeal to the courts; nor, if the question be doubtful will the court, in the absence of fraud or other special ground of equitable interference, substitute its judgment for that of the municipal body. But whenever it is clear and beyond question that the revenue which the company can possibly receive under the rates fixed will be wholly insufficient to allow it the compensation to which it is legally entitled, it is the duty of the court to declare the ordinance void.'

"It is submitted that this is a clear and accurate statement of the

court's duty. And Chief Justice Beatty, concurring in this regard, said:

"In fixing water rates, it is the duty of the city council to provide for a just and reasonable compensation to the water company. Anything short of that is simple confiscation, and is not only a violation of constitution rights, but is an extremely short-sighted policy."

"Such forthright common sense is in refreshing contrast with the barren legalism of the minority opinions.

"The early decisions, which, by referring public utilities to the ballot-box or by necessary consequence to a receivership, show a plain abdication of the court's duty to uphold the Constitution, are fortunately no longer met with in current decision. But there ensued a statement of principles of guidance to a court which became fairly prevalent and is still current. This is the doctrine so stoutly maintained by the able counsel for the city in this and other cases before me, namely, that a fair rate of return is one thing, the rate which a rate-fixing body would adopt, and that the court must find another and lower rate, one that just escapes being called a 'confiscatory' rate. The judicial problem, to be sure, is to determine the limit of confiscation, and just avoid it. I am objecting to the use of the term 'confiscatory' in the endeavor to determine the fair rate, solely because in practical effect it puts hobbles on the free march of mental processes. The average lawyer or judge, who in the humble financial dealings of his kind may be paying 6 per cent on a mortgage or be receiving 5 per cent or 6 per cent on some well-secured bond or stock, will inevitably balk at holding that a 6 per cent return is confiscatory of capital, even though the evidence may be clear to his mind that the lowest fair rate for the utility before him would be 7 per cent. \* \* \*

"To sum up: Due process implies just and full compensation. Just compensation for public service is given when the utility will enjoy from the legislative rates a fair return on the fair present value of its capital. Included in the fair return must, of course, be a fair net return. What is the fair or reasonable rate of interest to apply is a question of fact to be determined by a finding upon evidence. There is nothing in the Constitution nor in the nature of the question that requires that the legislature shall fix one rate, and that the Court must fix a lower rate. Upon both in equal measure rests the constitutional injunction to find the fair or reasonable rate of interest; and, therefore (in theory, at least), both may properly find the same rate applicable. The legislature's finding looks to the future. The Court's finding looks to the past; and if the Court finds that the legislature was clearly wrong, it is bound by its duty to so declare, and set aside the legislation. Such a declaration is not a fixing of rates, for it has no future force, nor a usurpation of legislative functions any more than any other declaration of unconstitutionality.

"But it will rarely happen, perhaps, that the legislative body and the Court will agree on the reasonable rate of interest applicable. There are two influences which normally, on the same evidence, ought to result in a legislative rate higher than the judicial rate. One is that the rate-fixing body may desire, as a matter of state policy, to encourage the growth of public service enterprise by offering a rate of return that is 'more than fair,' a sort of bonus, one that, though temporarily burdensome to the consumers, will benefit them in the long run by more ample facilities. Thus, I am informed by the city's counsel on the argument, and I think also by the evidence, that the Railroad Commission of this State has usually fixed 8 per cent as the fair interest rate, expressly stating that it was not a minimum. There can be no just criticism of this attitude; I believe that, on the evidence before me, I would be inclined to fix that rate if this were the rate-fixing tribunal. But the Court, on the other hand, is bound to find the minimum reasonable rate, and has no concern with matters of policy.

"The other influence has to do with the presumption that prevails in favor of the legislative finding. This presumption of correctness does not refer merely to the burden of proof that rests on the plaintiff in any suit at law. It is the principle that attends any review of determinations by bodies or tribunals, upon whom is imposed the primary responsibility for decision, whether that body be jury, trial court, legislature or what not. The character of proof required to overcome the presumption of correctness is variously stated as between these various classes. Here the Court is considering the action of a co-ordinate body in our scheme of government, and comity requires the presumption to be strongly maintained. As regards this class of the general class of cases where a presumption is entertained, we have also various forms of statement as to the degree of proof required. I prefer those which say that the proof should be 'clear and convincing,' or 'manifest' (e. g., *Missouri Rate cases*, 230 U. S. 501), rather than those which over-emphasize the problem by requiring 'flagrant,' 'gross' or 'quasi-fraudulent' action by the legislature to turn the scale toward invalidity. It is thus seen that my objection to the term 'confiscatory' as applied to the rate of interest arises solely from the fact that it has worked badly; has acquired the meaning of something less than fair.

"Having determined the mental attitude with which the problem should be approached, I proceed to state why I have deemed too high plaintiff's claim for 8 per cent or  $8\frac{1}{2}$  per cent as the lowest fair rate; and why on the other hand, the city's claim for a 6 per cent rate seems too low. There has been nothing in the nature of a compromise about my decision of this point.

"We must disabuse our minds at the outset of the notion that the face rate on government or other bonds, on preferred stocks or on secured notes has any but a remote bearing on the subject. We must also bear

in mind the greater risks of any business enterprise; the fact that the cost of money embodied in the sale of securities is greater than the face rate paid the investor by the amount of discount and other expense incident to marketing the securities, and paying trustees, coupon-paying banks and others during their life; and, finally, that the securing of money at a given cost, if favorable, implies a margin of earnings above that cost. The reasonable rate is sometimes defined as that rate of earning which will attract necessary capital to the enterprise; sometimes as that which is customarily earned in business of equivalent risk. I emphasize the point that it is a rate to be earned, not necessarily one to be paid by the utility. \* \* \*

"The 'legal rate' of interest in California, that is, the rate made applicable by statute where the agreement of the parties is silent in that respect, is, and was in the years in question, 7 per cent. (Civil Code Cal., secs. 1917, 1920.) This is the rate applied on judgments, for example, both in the state courts and in the federal courts in this state. It has been stated early in this report that the restraining orders herein were issued on the giving of bonds with conditions that if the bills were dismissed after final hearing, the plaintiff would return to its consumers the excess charges collected over the ordinance rates, together with interest thereon at 7 per cent per annum. The fixing of this interest rate does not amount to the determination of the rate of permitted earnings here sought, in the sense that the court might now agree with plaintiff that 8 per cent or 8½ per cent is the rate to be allowed. But, on the other hand, the court could hardly with justice fix a lower rate. The condition in the bond is not a penalty, but is aimed to compensate the consumers for the withholding of their money, including the value of its use. Certainly if plaintiff is to pay 7 per cent on these excess earnings if the bills are dismissed, it should be allowed to earn in its business that rate at least which it is required to return to the consumers.

"The treatment of this subject will not be complete without further reference to the related subjects of risks of the business and margin of safety or surplus of earnings. \* \* \*

"Finally, I may anticipate the argument of the city that however I may disagree with the reasoning of the latest Spring Valley Water Company decision (*supra*, p. 115), I am bound by the court's finding that 6 per cent was not an unreasonable rate. If this were another water company I should feel bound. But it by no means follows that the same rate should apply to a gas company; and I mention the following reasons:

"(1). The gas company manufactures as well as distributes its product and has the additional hazards that attend manufactures. For example, its apparatus for making gas is subject to sudden obsolescence; while a water company has no machinery beyond pumps and their power plants, all well standardized. The gas company, as stated before, has many of the hazards of the oil business, because oil is its

principal basis of manufacture; the water company is affected by the price of oil only in power productions, and if oil gave out, could turn to electricity or coal.

"(2) The gas company is exposed to the hazard of competition, in marketing its products, with other products; and there is always the possibility of substitution. There is no substitute for water.

"(3) Finally, in view of the court's reliance on precedents, I may mention the decision of the Supreme Court, rendered June 2, 1919, in *Lincoln Gas & E. L. Co. v. Lincoln*. There the court held that 6 per cent could not be considered a non-confiscatory rate under the evidence, saying:

"We cannot approve the finding that no rate yielding as much as 6 per cent upon the invested capital could be regarded as confiscatory, in view of the undisputed evidence, accepted by the master, that 8 per cent was the lowest rate sought and generally obtained as a return upon capital invested in banking, merchandising and other businesses in the vicinity; 7 per cent being the "legal rate" of interest in Nebraska.

"The court did not state explicitly what rate it had in mind as the minimum fair rate; but to me there is the suggestion that it had 7 per cent in mind in what is quoted above, and in the following concluding sentence:

"We are unable to say that the master erred in holding that the ordinance was not shown to have been confiscatory in its effect. It is probable that in the years 1907 and 1912 the net return was close to the line, if not below it; but that in the other years examined it was at least 7 per cent.'" \* \* \*

## REFERENCES

### GENERAL

#### 900—General

Everybody's Business—The Public Utilities, by Floyd W. Parsons. *The Saturday Evening Post*. July 3, 1920. p. 36.

In discussing the conditions that have been created by rising costs that have not been equal or uniform through all industries, the writer says:

"There are fixed laws that govern economic conditions with the same rigid exactness that is exercised by other laws that control the forces of Nature. It may appear at first glance that the problem of chief importance to-day is how to regulate the industries that are beginning to stoop under a growing weight of undeserved wealth. Careful thought will indicate, however, that prosperity, even of the undesirable kind mentioned, is often less of a menace to a nation than the precarious situation created when a few essential industries are permitted to drag on the rocks. The moment it is known that

there is no profit in a certain line of business capital refuses to become interested in the enterprises composing such an industry, and the production or service of the business is curtailed. \* \* \*

"It is easier to force men out of an industry by a policy of low wages than it is to get them back and again develop staff efficiency. A profession or business can be so damaged in a year that it cannot be restored to normal efficiency in a decade. In the meantime the nation suffers in many ways and to an extent that was not dreamed of, for no business can be injured without adversely affecting other enterprises that are related to it.

"In order to bring this thought home and get it out of the realm of theory let me speak of public utilities, and take, for example, our great gas companies. Here we have an industry made up of 1024 corporations, practically all of which operate under the jurisdiction of state commissions or some legislative enactment. The prices they are permitted to charge and the service they render, particularly as to quality standards under which gas must be supplied, are in most cases fixed by rule or regulation. The large advances in the cost of materials and of labor have created a serious problem for such companies to solve.

"The total investment in the gas industry is approximately \$4,000,000,000. Artificial gas is directly supplied to about 8,250,000 consumers in approximately 4600 cities, towns and villages throughout the country, and serves a population of more than 40,000,000 people. In the neighborhood of 62,000 miles of street mains are used to distribute gas, and this does not include the small service pipes which convey the gas from the mains to the householder's premises. It is estimated that 300,000,000,000 cubic feet of artificial gas is produced and distributed each year in the United States. In the making of this gas in 1919 the companies used 9,000,000 tons of bituminous coal; 26,000,000 gallons of oil; 1,500,000 tons of coke and 2,000,000 tons of anthracite coal. \* \* \*

"Many of our gas companies are practically starving in a land of plenty. The oil used in gas manufacture five years ago represented a cost of twelve to fifteen cents a thousand feet of gas made. At prices which some of the companies are compelled to pay to-day the cost a thousand feet has risen from thirty to fifty cents. Oil formerly costing three and four cents a gallon is commanding twelve to fifteen cents to-day. A careful examination shows that steam coal such as is used by the gas companies has advanced about ninety-five per cent in five years. During the same time gas coal has gone up seventy per cent, coke 150 per cent and labor 110 per cent. During the last ten years the price of gas in our largest cities has advanced from an average of about ninety-five cents a thousand feet to a price of \$1.07 for the same unit quantity. It is evident from the foregoing figures that the way of the gas companies at the present time is not a road leading to prosperity.

"Of all the articles or products that enter into everyday consumption gas has shown the least increase during the past few years. From the commencement of the war until the middle of last year the price of clothing increased approximately 100 per cent, and food ninety per cent. The figures showing the cost of gas in 100 cities during this same time indicate only a twelve per cent advance in the price of gas.

"The same thing that is true of gas is also true of many other public utilities. Let us not look upon these public utilities as charitable institutions, and let us beware of those politicians who seek popularity through loudly protesting that they are 'agin' this or that proposed adjustment because they are protectors of the people. Most of the public utilities are the people, and they have had the poorest deal that has been handed out to any line of business during recent strenuous times."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### UTAH

#### 340—Rate of Return

Utah Light & Traction Company, Application for Permission to Increase Rates. Decision of the Utah Public Utilities Commission, Granting an Increase. June 29, 1920.

In granting the Utah Light and Traction Company permission to increase its street railway rate, the Commission says:

"The securing of new money for any enterprise is something of a problem, and interest rates are above normal. But after these facts, and all the deductions therefrom are admitted, it is still proper to give consideration to the other truth that no right exists to demand more for a service than it is reasonably worth to the public. One measure of worth is the use the public can afford to make of the service.

"It may be said in general that the higher the rate, the lower is the value of the service to the public. Fares that restrict traffic prevent the proper functioning of the street car system.

"The Oregon Commission in declining to grant further increases in rates to the Portland Railway Light & Power Company, said: (P. U. R. 1920 C, 457, 458.)

"When fares exceed what the average car rider can conveniently afford to pay, the man, who uses the cars as a convenience, ceases to ride and only the necessity patron remains. Even he seeks an alternative method of transportation. Failing in that, employment is sought within walking distance of his home or his residence is moved, where possible, within walking distance of his employment. He makes less frequent trips to the business section of the city to make purchases, to attend places of amusement or to make use of educational facilities of the city. He makes fewer trips to visit friends. The result is detrimental not only to the company and the individual citizen, but to the business institutions of the city, and to the civic and economic welfare of the municipality as a whole."

"In Massachusetts, where street railway fares have been more fre-

quently raised than in any other part of the country, the Public Service Commission said: (P. U. R. 1919 A, 817, 829.)

“While it cannot be said that no advantage to the companies has resulted, it is true that in nearly every case the gain in revenue has been less—and often far less—than the prior estimates. Other factors have entered in, but, making all due allowances, it is quite clear that increases in fares impose a burden upon the public which considerably exceeds benefits which they bring to the companies.’

“The Commission has, to the best of its ability and judgment, balanced the needs of the Company and the interests of the public in an effort to do substantial justice to both. No one will deny that the wage increase of a quarter of a million dollars a year, coming at a time when there are already inadequate earnings, produces a burden too great to be borne by the Company without additional revenue. On the other hand, the public is entitled to be protected in the enjoyment of the lowest rates possible consistent with the service it requires. In fixing the rates authorized herein, the Commission has, therefore, attempted to provide for revenue sufficient to cover operating expenses, depreciation and maintenance, and a moderate return on the valuation of the property in the use of the public.

“The Commission does not say that these rates will yield a return on the property which will equal the present high interest rates demanded in the money market; nor does the net return the Company is expected to receive necessarily reflect the opinion of the Commission as to maximum return that might be allowed. The Commission expects the Company will be able to add to its revenues, and, therefore, to its rate of return, by adopting economies hereinbefore discussed. In other words, there is left something for the Company to do by reducing expenses wherever found possible, and by increasing patronage through giving better service, as it is believed can be done. The Commission is ready to render the Company such assistance as is possible to accomplish this purpose.

“The calculations that have been made to ascertain the probable results on the finances of the Company of the application of the proposed new rates have been based on the traffic conditions of 1919. There is reason to expect that the possible loss of patronage due to increased rates will be more than offset by the increase in the number of car riders in 1920 over 1919. Traffic during early months of 1919 was below normal owing to the influenza epidemic, and figures compiled in the office of the Commission show that during the first five months of 1920 there was an increase of 1,601,781 in the number of passengers carried as compared with the same months of 1919. The financial report for the first quarter of 1920 shows an increase over the same period of 1919 in net divisible income of \$17,033.49. This showing reflects the decreased earnings in 1919 due to health conditions, and it is not to be expected that the later months of 1920

will show corresponding increases over 1919, but these figures are given to sustain the belief of the Commission that the Company, under the rates herein fixed, with improved traffic conditions, will realize a fairly satisfactory return on its investment."

In a dissenting opinion, Commissioner Stoutnour says:

"Courts and Commissions have held that a utility such as this is entitled to make such rates or charges for this service as will provide:

"1. The necessary operating expenses incurred in the rendering of that service.

"2. An amount sufficient to retire or renew the physical property involved in the rendering of that service when and as such property shall have become worn out or obsolete.

"3. A fair rate of return upon the value of that property which is employed in the service of the public. (*Smyth vs. Aimes*, 169 U. S. 466.)

"The principle that utilities may earn only a fair return of interest on capital actually and reasonably invested, means that it prevents a utility from ever securing the return of the original investment. It also prevents the utility from earning funds with which it may make additions or betterments to its property, and makes it necessary that such funds be obtained by borrowing new money.

"In connection with this case, to be specific, to carry out the recommendations of the Commission, it will be necessary that the utility borrow new capital for the purchase of equipment. It must also borrow money to make the necessary additions and betterments which a going service demands. It must compete in the money market for capital at going rates of interest, which rates are established by the demand of others for that same money. In short, it must pay such rate of interest as a utility lender will agree to take by way of return for his money. The rates of interest for money invested in utilities of this kind and character, are well known and established and are before this Commission. Interest rates have advanced, as have labor and materials. Money cannot be borrowed at old rates any more than labor can be employed at old standards, or material purchased at old prices. We should deal with conditions as they are. Unless the property which borrowed money represents is permitted to earn at a rate that will pay the interest on that money, new capital cannot be obtained. Also rates which permit only a return upon capital previously invested at the old lower rates of interest, stop development, for such rates preclude borrowing at new rates. Inability to borrow money means a stoppage of growth, with decreased instead of increased service generally. A utility must grow with the community. The interests of the two cannot be separated.

"The minimum expense which this Company will incur during the

coming months can be accurately determined. The present wage scales are fixed for at least the coming ten months, while materials must be bought in a generally rising market. The limitations of traffic for coming months are also well defined.

"In my opinion the rates established will not produce sufficient revenue so that the utility can get the necessary capital for additions and betterments and for the improvements recommended, which improvements will mean finally decreased costs of operation, reflected in better service at lower costs.

"The question before the Commission is largely an economic one; any decision arrived at along other than economic lines will not satisfactorily or permanently solve the problem for the street car rider. He is vitally interested in securing adequate and reasonable service at the lowest price consistent with the giving of that service. A rate fixed too high is unjust and unreasonable. A rate fixed too low will not permit the giving of the service to which the car rider is entitled. Service is the thing he buys. A somewhat higher rate, which I believe should be instituted, will not deny this vital service to the public, for it would give the utility a better opportunity to serve with consequent decreased costs, which are the things that vitally interest the public, namely, service and costs."

## **ARKANSAS**

### **630—Cost of Supplies**

Fayetteville Gas and Electric Company, Application for Authority to Increase Rates. Decision of the Arkansas Corporation Commission, Granting the Application. June 14, 1920.

The Fayetteville Gas and Electric Company filed a new schedule with the Arkansas Corporation Commission to become effective February 15, 1920. The proposed schedule contained rates that were substantially higher for lighting than the rates then in effect and contained rates for power that would have the effect of producing some additional revenue by reason of the rearrangement of the breaks in the scale.

The Commission made an inventory of the company's property. Regarding the free service that the company furnished to the hospital at Fayetteville, the Commission says:

#### **129.1—Discrimination**

"It was not brought out in the hearing whether the present free service that was furnished was in conformance to a municipal requirement or franchise or whether it was voluntarily performed on the part of the company. In either event the furnishing of free service is contrary to the theory of state regulation of public utilities as now obtains under the provisions of the law. There is no service rendered by a public utility company that does not require,

on its part, some expense. To be specific, the utility is at some expense for all of the current generated by it and as the entire cost and expense, including maintenance, depreciation and operation, together with a fair return upon the property, must be paid, it is apparent that if any institution or person receives free service, the cost of such free service is a loss to the company, unless it falls under those who do pay. Inasmuch as the company, under the law, is entitled to a fair return upon the property invested and is used for the public, the value of the service rendered free by the company must be made up by an increased measure of rates to those who pay the rates. This is a discrimination, as the Commission views it. Charging one for his supply and serving another free is an unfair practice and unjust and in violation of the law in unreasonable preference and unjust discrimination. The following cases sustain the principle that a utility when engaged in the public service subject to state regulation should supply no free service or any service for any sum less than what is determined to be a reasonable rate. *Hollister v. Hollister W. Co.* (Cal.) P. U. R. 1915D, 626; *Re Galveston Waterworks Co.* (Ind.) P. U. R. 1915E, 31; *Knott v. Southwestern Teleg. & Teleg. Co.* (Kan.) P. U. R. 1915B, 216; *Board of Education v. Guthrie Gas Light, Fuel & Improv. Co.* (Okla.) P. U. R. 1915B, 177; *Leavenworth v. Leavenworth City & Ft. L. Water Co.* (Kan.) P. U. R. 1915B; *Janesville v. Janesville Water Co.* 7 Wis. R. C. R. 626; *Re New York Teleph. Co.* (N. J.) P. U. R. 1915D, 287; *Public Service Electric Co. v. Public Utility Comrs.* 87 N. J. L. 128, P. U. R. 1915C, 229, 93 Atl. 7070; *Landon v. Lawrence* (Kan.) P. U. R. 1915E, 763; *Farmington Chamber of Commerce v. Mountain States Teleg. & Teleg. Co.* (N. M.) P. U. R. 1915F, 625; *Re Delaware & A. Teleg. & Teleph. Co.* (N. J.) P. U. R. 1915F, 358; *Smith v. City Water Co.* (Wis.) P. U. R. 1916B, 1068.

"In view of the fact that the company has been unable to declare a dividend for the past four years and has been unable to set aside anything, whatever, for depreciation, the Commission concludes that it would be justified in approving the proposed schedule of rates for application. The electric rates that have been in effect at Fayetteville are lower than the rates in any other town in the state of Arkansas with the exception of Forth Smith. The company cannot continue to operate on the present rates in view of the present increased cost of materials, fuel and wages and if this Commission were to attempt to require it to do so, it would be only a matter of time before the service at Fayetteville would suffer a complete breakdown.

"The 1919 operating expenses amounted to \$49,141.62 and estimating that the expenses for 1920 will not exceed this figure, the proposed rates will give an annual income of \$65,853.60. This will leave for interest and depreciation the sum of \$16,711.98 on a rate basis of \$147,770.96, giving a return for interest and depreciation of 11.3%. The Commission concludes that 5% is a reasonable allowance

for depreciation on electric property of this kind and this will leave 6.3% for interest on the value of the property as determined by the Commission's Engineer. This the Commission does not consider unreasonable."

### ARKANSAS

#### 226.6—Abandonment of Service

N. G. Sawyer v. Mays Manufacturing Company, Complaint Against the Proposed Discontinuance of Service. Decision of the Arkansas Corporation Commission, Ordering the Company to Continue to Furnish Service. June 7, 1920.

On April 1, 1913, the City of Leslie, Arkansas, by Ordinance No. 92, granted to the Mays Manufacturing Company the exclusive right for a period of fifty years to furnish electric service.

In consideration of the franchise so granted, Ed Mays agreed on his part that during the life of the franchise he would provide and maintain a sufficient supply of electricity to supply the demands of the City of Leslie for heating, lighting and power purposes at the prices and upon the terms mentioned in the franchise.

This operation was continued up to May 14, 1920, at which time the Commission denied the petition of Mays for an increase in rates. No motion was filed for a rehearing and no appeal was taken from this order, but on May 29, 1920, the defendant notified his customers that he declined to furnish electricity to the inhabitants of Leslie any longer. The plaintiff, N. G. Sawyer, thereupon filed a petition with this Commission, praying that the defendant be restrained and prohibited from discontinuing, or attempting to discontinue, service to his customers in furnishing them electric current until such time as the Commission could have a final hearing upon the petition, and that upon such final hearing the Commission, by proper order, prohibit the defendant or his agent or employees from discontinuing service to the public. Upon this petition the Commission issued a temporary restraining order prohibiting the said Ed. Mays, doing business as the Mays Manufacturing Company, from discontinuing electric service in the town of Leslie, Arkansas.

On June 2, 1920, the Commission proceeded with the trial of the case and it appeared from the facts and the testimony introduced that the defendant had refused and was still refusing to serve customers in the town of Leslie, Arkansas, although they had complied with all of his rules, had paid their bills and were demanding service.

The Commission says:

"There is little doubt that the defendant is engaged in a public service, and is controlled by Act 571 of the Acts of 1919. It is immaterial that he as an individual is operating this plant instead of a corporation operating it, for under the provisions of Section 5 of Act 571,



the Commission is given jurisdiction over all persons, associations, corporations, municipalities, improvement districts and agencies employed or engaged in any business of a public nature, or who shall be serving the public generally, whether incorporated or not. When he accepts a franchise from either the city or the State by which he is given a monopoly to serve the public, he also accepts the burden of furnishing the public adequate service at all times. He cannot discontinue the service at will, but he must comply with the terms of his franchise as fully as the City or the State must comply with theirs. The books are full of cases to the effect that a public service company cannot discontinue such service without the consent of the State. It is needless for us to set out the long line of authorities on this point, but in the late case of *Re Parkville Oil & Gas Company*, P. U. R. 1919A, 502, the Missouri Public Service Commission discusses this question at length and cites cases pro and con. For convenience and brevity, we quote from the decision in this case:

“While there are respectable authorities holding that a public utility may discontinue service without the consent of the State (*Peoples v. Albany & V. R. Co.*, 37 Barb. (1. c.) 220; *San Antonio Street R. Co. v. State*, 90 Tex. (1. c.) 528, 35 L. R. A. (1. c.) 665, 59 Am. St. Rep. 834, 39 S. W. 926; 1 Wyman Pub. Serv. Corp. 1911 ed. Secs. 296, 297; *Coe v. Columbus, P. & I. R. Co.*, 10 Ohio St. 372, 75 Am. Dec. 518), we think that, under the great weight of authority, a public service corporation such as the applicant, which is chartered under the laws of the state to perform a public service, cannot dismantle its property and discontinue such service without the consent of the state. *Culver v. St. Joseph & G. I. R. Co.*, 4 Mo. P. S. C. (1. c.) 391; *Gates v. Boston & N. Y. Air Line R. Co.*, 53 Conn. (1. c.) 342, 5 Atl. 699; *State ex rel Naylor v. Dodge City, M. & T. R. Co.*, 53 Kan. 377, 42 Am. St. Rep. 295, 36 Pac. 747; *Day v. Tacoma R. & Power Co.*, 80 Wash. (1. c.) 166, L. R. A. 1915B, 547, 141 Pac. 347; *Colorado & S. R. Co. v. State R. Commission*, 54 Colo. (1. c.) 94, 129 Pac. 506; *Pana v. Central Illinois Public Service Co.* (Ill.) P. U. R. 1916B, 177; *State ex rel Caster v. Kansas Postal Teleg.-Cable Co.*, 96 Kan. 298, P. U. R. 1915E, 222, 150 Pac. 544. In the *Caster Case*, supra, the Kansas supreme court, discussing the question as to whether the laws of Kansas required the Company to obtain the consent of the Public Utilities Commission before discontinuing its telegraph service, and citing sections of the Public Utilities Law of Kansas which are similar to like provisions in the Public Service Commission Law of this state, said: ‘In view of all these, can there be any doubt of the duty of the defendant before dismantling its station at Syracuse and abandoning its business thereat, to secure the approval of the Commission for such an important change in its mode of service? How is the Public Utilities Commission to discharge its important duties if the public service companies may quit business here, there, or anywhere in the state without an opportunity for the Commission to determine the propriety of such a course? It is clear that if the de-

defendant may forego its business in Syracuse without the sanction of the Commission, it can close its office in Topeka, Wichita, or Kansas City, without the consent of the Commission. If this public utility, a telegraph company can close one of its offices and quit business without the consent of the Commission, any other public utility, like the Santa Fe Railway, for example, could close its depot at Dodge City, Hutchinson, or Emporia, without the consent of the Commission. Where would this end? If these utility corporations may abandon this particular service without the consent of the Commission, may they not take off their passenger trains, take up and abandon unprofitable branch lines, change the fares and rates of transportation for passengers and freight, or raise the charge for telegraph messages, without the consent of the Commission? These questions answer themselves. To yield approval to the contention of the defendant is to concede that the state's program for the regulation and control of public service corporations is ineffective; that the Public Utilities Act has been enacted in vain.'

"And in *State ex rel. Crinsfelder v. Spokane Street R. Co.*, 19 Wash. 510, 53 Pac. 719, cited and quoted by McQuillan, C., in the *Culver* case, *supra*, it was said: 'We conclude that a corporation of the nature of appellant, receiving its franchises from the State, and entering upon the enjoyment of them cannot cease to perform the functions which were the consideration for the grant of such franchises without the consent of the granting power.'

"The Arkansas Corporation Commission, acting for the State, could, on proper showing, grant any public service company the right to cease operation and to dismantle its plant, but the defendant has made no such application here. His action denies the power of the State to regulate his business and defies the officers of the State to take any steps for the protection of the public. He holds, on the one hand, a franchise issued to him by a municipality, which is a part of the state government, which franchise gives to him the exclusive right to maintain an electric light plant in the city of Leslie, which franchise he has not surrendered, and on the other hand, he refuses to comply with its terms, as was so aptly said in the *Kansas* case, *supra*, 'To yield approval to the contention of the defendant is to concede that the state's program for the regulation and control of public service corporations is ineffective; that the public utilities Act has been enacted in vain.'

"It is true that the defendant had heretofore filed his application for an increase of rates, but he was not entitled to this increase as a matter of right merely upon his application, but the burden was upon him to establish by a preponderance of the evidence that such increased rates were necessary. The Commission held in that case that the defendant had not presented evidence sufficient to justify the increase. The case was dismissed without prejudice to any future

rights which the defendant might have, and he was given an opportunity, if he saw fit, to present his evidence in such a manner that the Commission would be able to ascertain what the true condition of affairs was. He had his remedy; he could have reinstated his suit, shown by proper audit of his books that he was not getting an adequate return on his investment, or he could have stood on his original proceeding and filed a motion for rehearing within twenty days (which he did not do), and if rehearing was denied he could have appealed to the Supreme Court. None of these things he saw fit to do. He elected, on the other hand, to treat the contract with the City of Leslie as a scrap of paper, to defy the authorized representatives of the State government and to trample under foot the rights of those whom he was serving in the town of Leslie.

"This Commission will issue an order directing that the defendant continue to furnish adequate and reasonable service to the citizens of Leslie, and that he re-establish connections wherever broken and that he again resume his duties in the operation of public service company."

## NEW JERSEY

### 630—Cost of Supplies

Public Service Gas Company, Application For Permission to File an Amendment to Its Schedule of Rates. Decision of the New Jersey Board of Public Utility Commissioners, Denying the Application. June 22, 1920.

The Public Service Gas Company filed a proposed amendment to its schedule reading as follows:

"An addition or deduction of one cent (1 c.) per thousand cubic feet for each thirty-three hundredths cents (.33 c.) per gallon of increase or decrease from an average cost of five and eighteen hundredths cents (5.18 c.) per gallon for gas oil received at the plants of Public Service Gas Company during the month.

"The above clause to be applied to the schedule of rates as filed with the Board of Public Utility Commissioners on June 24th, 1919, and approved November 18th, 1919, and to become effective to all consumers with June sales, 1920."

A hearing was called for consideration of the proposed amendment, notice thereof being given to the chief executive officials of the municipalities in which the company operates.

The Commission says:

"The uncertainty both as to the supply and price of gas oil is too well known to require discussion. Nor do the probable causes need consideration. It is manifest that the existing and future conditions

are uncertain. The cost of manufacture per thousand cubic feet of gas furnished by the company was ascertained in the original investigation of the rates in which the rate was fixed by this Board at ninety cents per thousand cubic feet. When the present rate was fixed it was ascertained by merely adding the known increased costs over those in the former case. Oil is one of the large factors in the manufacture of gas and with the base already found and used by the Board in the former cases any fluctuation in the price thereof from the last base price used could be applied either upward or downward. A varying price would result. In theory such a method would appear to be sound. The resulting uncertainty to the consumer as to the price to be charged would, however, make it impractical and probably cause much confusion and annoyance. The Board has found that general dissatisfaction arises from the application of variable rates. People generally prefer to know exactly what the rate will be. It is true that the Board has approved of the application of coal clauses to the rates for wholesale electric power. In such cases this affects manufacturers who obtain power from electric companies. If these manufacturers maintained their own electric plants, the costs to them of electric power would vary with changes in the price of coal. This we believe is understood by the comparatively small number of those who use electric power under the wholesale rate schedules. To vary the prices to customers in general of electricity corresponding with changes in the prices of coal would be subject to the objections stated above. It is also desirable that when a rate is fixed it should remain in effect independent of temporary fluctuations in operating costs and should not be changed because of such fluctuations unless it appears that to maintain the rate would work an injustice either to the public or the utility.

"The Board finds and determines that the proposed amended rate filed by the company is unjust and unreasonable and disapproves the same."

## REFERENCES

### RATES

#### 623—Power Factor

Power Factor Session of the American Institute of Electrical Engineers Convention held at White Sulphur Springs. *Electrical World*. July 10, 1920. p. 65, 1½ pages.

There are many developments in types of industrial power loads which are attended by unbalanced conditions between the phases, unbalanced as to amount of loads and as to phase relations between current and voltage. In such cases the numerical value of power factor may vary widely with different definitions. On account of the importance of this development a joint committee representing both the N. E. L. A. and the A. I. E. E. has been deliberating on the definition and measurement of power-factor in polyphase circuits.

Two definitions covering different forms of power factor in polyphase circuits have been arrived at by a joint committee of the N. E. L. A. and A. I. E. E., together with some suggestions as to proper qualifying terms to apply to each definition. These definitions follow: (1) Power factor in a polyphase circuit is the ratio of the total watts to the arithmetical sum of the volt-amperes in the several phases, each measured to a non-inductive neutral point. This definition may be otherwise expressed as the weighted mean of the individual power factor in the phases (weighted according to the volt-amperes in each phase). (2) Power factor in a polyphase circuit is the ratio of the total watts to the vector sum of the volt-amperes in the several phases.

## **PUBLIC SERVICE REGULATION**

### **252—Commission Annual Reports**

Rhode Island Public Utilities Commission. Sixth Annual Report. For the Year Ending December 31, 1918. 256 pages.

The opinions and orders of the Commission in formal and informal cases and statistics for the utilities under the jurisdiction of the Commission are given for the year 1918.

## **GENERAL**

### **980—Public Relations**

The Public Has a Moral Obligation, by Richard T. Higgins. Electric Railway Journal. July 10, 1920. p. 58, 2 2/3 pages.

In defining the duty of the public concerning public utility service, with particular reference to street railways, the author says:

"The organization and operation of a public utility company and any exclusive or special privileges granted to it are primarily for the purpose of furnishing to the people, within the scope of its activities, a necessary public service at reasonable rates, rather than as a business enterprise for the purpose of speculation or large financial profits.

"The success of a public utility accrues to the benefit of the general public, as well as to the officers and stockholders. The interested parties in a utility operation are the stockholders or investors, the officers and employees and the general public. A duty and a moral obligation devolve upon all of the parties for the successful operation of the enterprise, which can only be a success by their active co-operation in the faithful performance of their respective duties and obligations. If the parties are antagonistic to each other it is bound to operate to the detriment of the service and to the detriment of their individual and collective interest. \* \* \*

"Street railways are operated by virtue and under authority of special grants and franchises issued by state and municipal governments for the benefit of the people. So long as the particular utility is an absolute public necessity the governmental agencies which created the utility corporation should enact such protective and remedial legislation as will enable it properly to perform its public duty.

"The great and important motive power back of any enterprise, whether public or private, is finance, and a utility company without sufficient capital or unable to earn a fair return on the capital honestly invested and required for extensions and betterments, after paying operating, overhead and fixed charges, is not in a condition to render adequate service at reasonable rates.

"It may be claimed that the logical conclusion is to increase the rates to a point necessary to produce the required revenues, but in the case of street railways the expensive collateral statutory burdens, the competition of unregulated and less burdened transportation agencies reducing the volume of street railway business and the more or less unresponsive attitude of the traveling public, such an increased rate is liable to become a prohibitive rate, resulting in decreased rather than increased revenues.

"It is therefore of first importance that state legislatures and municipalities granting street railway franchises enact remedial and protective legislation for the benefit of the great mass of people who use or would use street railways as a means of transportation. \* \* \*

"Failure to give such protection reduces or entirely wipes out the value and importance of a utility franchise and nullifies the legislative intention in issuing the original grant. \* \* \*

"Every urban community will agree that street railways are a public necessity and that their suspension or abandonment, notwithstanding the automobile possibilities, would be a public calamity and every student and observer of street railway operation must agree that street railways cannot be successfully maintained if the public service automobile is permitted to operate as a free lance along its lines of road."

## COURT DECISION REFERENCES

### 810—Municipal or Local Regulation of Utilities

Brooklyn City R. Co. v. Whalen. Decision of the New York Supreme Court, Appellate Division. May 10, 1920. 182 N. Y. Supp. 283.

Grover A. Whalen, the defendant, individually and as commissioner of plant and structures of the city of New York, appeals from an order enjoining the defendant "from operating or in any manner assisting in the operation or supervising the operation or maintaining or in any way aiding in the maintenance of \* \* \* specified bus line or lines of motor vehicles, in the Borough of Brooklyn, city of New York," upon certain routes described in the said order. The plaintiff, a street railroad company, owns and operates lines of surface cars in Brooklyn. In the fall of 1919 the Board of Estimate and Apportionment authorized the defendant to operate motor vehicles for the carrying of passengers on certain prescribed routes. Pursuant thereto he established routes, and under his authority and supervision lines of motor vehicle stages or omnibuses are running over the routes specified in the order and paralleling the tracks of the plaintiff company. This action is brought to enjoin the defendant from maintaining and operating the stage lines of motor vehicles. An order enjoining the defendant pending the trial of the action was granted at the Special Term, and the defendant appeals to this court.

The Supreme Court says:

"The city of New York has no power or authority to operate bus or stage lines in its streets, unless it be found in a grant from the people, represented in the Legislature. Its charter, and other general and specific laws applicable to it, are the measure of its powers and duties. Any act not authorized by such laws is *ultra vires* of it and a usurpation. The city, which is a municipal corporation, is a creature of the law. The law which created it defines its powers and duties. It has no more right to act in excess of the powers granted it than has a private corporation. A more liberal method of interpretation may be applied by the courts to powers granted a municipality for public purposes than to those granted to private corporations; but when a question arises whether a corporate act, either of a municipal or a private

corporation, is beyond its powers, the answer must be sought in the statutes which constitute its charter.

"The statutes of the state will be searched in vain for any grant of power, express or implied, to the city of New York to operate bus or stage lines such as those we are now considering; and, further, section 1458 of the charter of the city (Laws 1901, c. 466) contains an express prohibition against establishing and maintaining such lines, except by grant of a franchise. Such franchise has not been granted by the Legislature to the city. The city, acting through the Board of Estimate and Apportionment and the mayor, has been made the agent of the Legislature to grant franchises for the use of its streets (section 242 of the charter), but it has no power to confer a franchise on itself; and the power to grant franchises is surrounded by limitations and conditions which have in no wise been complied with in this case.

"The corporation counsel contends that the city operation of stage lines is authorized by the so-called Home Rule Act (chapter 247, Laws 1913) and, if not, is justified as an emergency measure. These suggestions, elaborately briefed and earnestly argued, demand our careful consideration.

"The Home Rule Act, now found in article 2a of the General City Law (Consol. Laws, c. 21), contains a general grant of powers (section 19) and a grant of specific powers (section 20). The general grant of powers is to 'regulate, manage and control its property and local affairs.' The city is not only a political subdivision having governmental powers, but a property owner; but it does not own the streets, for they are highways for the use of the public at large. A municipality has certain powers and duties with respect to the streets within its boundaries; but, even if it owns the land in the bed of the streets, it cannot divert them from public use. The streets are not the property of the city, in the sense that the word is used in the Home Rule Act. The grant of power to regulate, manage, and control its property does not, therefore, confer power of municipal operation of transportation lines.

"The 'local affairs' which the Home Rule Act authorizes the city to regulate, manage, and control are affairs within the jurisdiction of the city by the law of its being. The words 'local affairs' are so indefinite in their meaning that they will probably occasion much litigation, and many judicial opinions will be written on their construction with reference to conditions that may arise. It would be futile to attempt a definition of what constitutes 'local affairs' within the meaning of the act. But one thing, I think, may be safely said, and that is that the power to control 'local affairs' does not add new powers to the corporation. The act refers to local affairs which were such at the time the act was passed in 1913. Certainly municipal operation of bus and stage lines was not a local affair at that time.

"The act (section 20) contains a grant of specific powers, which are set forth in 23 subdivisions. I do not find among these special powers any authority for municipal operation of transportation. In fact, here again is the provision that the city had power to grant franchises for the use of its streets, from which the implication results that such lines can be operated only under franchises granted under conditions prescribed by law.

"We cannot close our eyes to the far-reaching nature of the argument of the corporation counsel. If the Home Rule Act authorizes municipal operation of common carrier lines, it is difficult to see any limit to its scope. The city could do whatever its existing officers thought was for the general welfare. The line of argument that the Home Rule Act empowers the city to operate stage lines of motor vehicles in order to promote the welfare of the citizens would with equal force apply to establishing municipal markets, municipal

department stores, municipal drug stores, or any other enterprises which the officials in power conceived would be in the interest of public welfare. No such meaning can be given to the act. It must be interpreted consistently with the fundamental principle that the powers of corporations, both municipal and private, are such only as are granted expressly or by necessary implication in the laws which constitute the charter. From the use of words of indefinite import, like 'general welfare,' defined to include 'the promotion of education, art, beauty, charity, amusement, recreation, health, safety, comfort and convenience' (section 21, Home Rule Act), no implication can be drawn of a grant of power to cities in the state to assume those activities which according to our conception of government founded on the principle of individualism, is left to private enterprise. I conclude that the Home Rule Act does not contain any grant of power to the city, express or implied, to operate lines of transportation in the streets. *City of Geneva v. Fenwick*, 159 App. Div. 621, 145 N. Y. Supp. 884; *People ex rel. Kieley v. Lent*, 166 App. Div. 550, 152 N. Y. Supp. 18; *People ex rel. City of New York v. N. Y. R. Co.*, 217, N. Y. 310, 112 N. E. 49. \* \* \*

"If the welfare and convenience of the citizens require additional accommodations for transit, such as would be furnished by established stage routes, there is a legal way to accomplish the result. The city has power to grant a franchise, subject to the determination of its necessity and convenience. But the city has no power of municipal operation; nor has it the right to authorize others so to use the streets without observing the conditions to a legal and regular grant of a franchise.

"The plaintiff plainly suffers a special injury from the competition of these stage lines and from the added obstruction to the operation of its cars under its franchise. Even if the purpose of establishing the lines is not to injure the plaintiff in the exercise of its legal rights, it has that effect. Moreover, no bus line can be established in streets occupied by the plaintiff, unless a certificate of convenience and necessity be secured, and upon an application for such certificate the plaintiff has a right to be heard. Section 26, Transportation Corporations Law; *People ex rel. N. Y. C., etc., Co. v. P. S. Com.*, 195 N. Y. 157, 88 N. E. 261. A common carrier, therefore, has a legal right to question the necessity and convenience to the people of a paralleling common carrier. *Matter of Kings, Queens & Suffolk R. R. Co.*, 6 App. Div. 241, 39 N. Y. Supp. 1004. In the days before the power of public regulation and control of common carriers was established and recognized as it is now, competing roads were built, not for the benefit of the public, but so to injure the established road as to compel it to purchase in self-defense. This was recognized as an abuse, and the correction applied was the law that no line of transportation should be established without a certificate of public convenience and necessity. Whether that requirement would apply to municipal operation is irrelevant to this inquiry. If the Legislature should authorize municipal operation, the act authorizing it would probably determine whether the certificate should be required. The plaintiff, having a franchise to operate in the public streets and being under financial pressure of the prevailing economic conditions, suddenly finds its most profitable lines paralleled by stages operating under the control of the defendant, without authority of law, and without having obtained a certificate of public convenience and necessity. I think the plaintiff has a standing in a court of equity for relief.

"Whether the plaintiff has failed in fulfilling the obligations of its franchise has nothing to do with the question now before us. If it has, the law affords a remedy. The orderly processes of the law are better and probably more effective than an attempt at correction by an unauthorized and illegal administrative act.

"The order should be affirmed."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### VIRGINIA

#### 300—Investment and Return

Culpeper Telephone Company, Application For Authority to Increase Telephone Rates. Decision of the Virginia Corporation Commission, Granting the Application. April 29, 1920.

The Culpeper Telephone Company furnishes telephone service in the towns of Culpeper and Orange and the counties of Culpeper, Orange, Madison and Rappahannock, operating exchange stations at Culpeper, Orange, Madison and Sperryville, and having connection with certain privately owned rural lines, which pay a switching charge.

That feature of the company's application which has attracted the most attention and aroused the greatest opposition is the proposed division of the company's system into four zones, comprising in each instance the lines connected with the four exchanges operated by the company as above described. It is proposed to collect a charge of 10 cents for all messages between one switchboard and another, instead of the free service which has been given for so many years. Messages which would pass through three switchboards are to be paid for at the rate of 14 cents.

The Commission says:

"It is to be noted that this company did not take advantage of the increase in rental rates and the inflexible toll charges between any two exchanges prescribed by the Postmaster General while the wire lines were under Federal operation. The company elected to try to get along on the old rates and adopted only that part of the Postmaster General's schedule which provided a charge for installing new telephones, for moving instruments, and for directory accounts and other expenses in connection with the change of name of a subscriber. \* \* \*

"The Commission feels that the company would be reasonably entitled to a reward for accomplishment. There is just as much reason why operators of public utilities should be compensated for good

business judgment and achievement as private business men, and, indeed, to proceed on any other basis would be to encourage incompetence and slovenliness in the operation of public service corporations, which would inevitably reflect itself in inadequate service to the public. We quote with approval from the Illinois Public Utilities Commission on the petition of the Monmouth Public Service Company for advanced rates on electric current.

“It would obviously be improper to base rates for utilities service upon a hard and fast rule of the actual expenses of operation and fixed rates of return without regard to the efficiency displayed in the conduct of the business. Such a procedure would offer no incentive for improvement and no reward for accomplishment.

“The public has the right to expect efficiency of operation of utilities engaged in public service, and has the right to share in its benefits; but accomplishment merits a tangible and genuine compensation for its achievements.” (P. U. R. 1919E, 494, 501.)

“The Commission, however, is not in this instance called upon to prescribe definite financial rewards for business success, since even, under the rates proposed by the company, it cannot, judging from the evidence before the Commission earn an adequate return upon the probable fair value of its plant used and usable in giving service to the public.

“The rates have always been so extraordinary low that the proposed increase naturally looks very large.”

### **313—Unit Prices**

“The Commission regrets that, in view of the method used by the company’s accountant in valuing the property, it is unable to arrive at a definite valuation. His figures are of great interest and may be used in all future proceedings with reference to rates, but they do not accord with the views of the Commission in arriving at values. He has used a partly estimated and partly actual inventory as of November 30, 1919, and has applied thereto the unit prices of 1916 in part and the actual unit price of previous years in part. It would have been more nearly in accord with our views had he averaged the unit prices for the five years 1912-1916, applying them to an estimated inventory of 1916, and then added the actual cost of necessary purchases since 1916 at war prices. As there is no evidence as to what part of the property was purchased during such five-year period, nor what part was acquired since 1916, it is impossible even to guess at the result had our system rather than Mr. Sturm’s been applied. It is safe to say, however, that no larger amount of property was bought at war prices than was necessary, and since the pole line values, approximating nearly half of the total, are calculated on the 1916 basis, it may be safely assumed that they are put down at a

higher sum than should be properly allowed. On the other hand, actual purchases at inflated war prices would go to the credit of the company. Undoubtedly there should be a reduction in the valuation of \$1,140 as applied to telephone instruments, for, as pointed out by counsel for the opponents, the company's calculation was based on an error.

"No attempt was made by the company to base its valuation on a basis of reproduction at inflated war costs. The Commission would have accepted no such basis, and is on record as refusing to adopt abnormal price bases in arriving at fair value. \* \* \*

"We are of the opinion that the fair value of the property of the Culpeper Telephone Company, for rate-making purposes, used and usable in the service of the public, is not less than \$90,000.

"It is probably true, as contended by the opponents of the increase, that the company's plant as a whole did not cost this sum of money. We see no reason why the Culpeper Telephone Company should not profit by increasing property values in normal times just as the owners of farm and residence property in Culpeper, Orange, Madison, and Rappahannock counties profited by increases in value during the years 1901 to 1916. The Commission no longer uses the capitalization of utilities in making rates for service. The argument of the opponents in this case is that if the capitalization of the Culpeper Telephone Company were \$100,000 and the plant worth \$50,000, the company would expect to earn returns on its capital. The answer is that the Commission would not allow it. We would limit its returns to the \$50,000 represented by the property actually used in the service of the public, regardless on the one hand of unwise investments, watered stock, or improper financial transactions, and on the other hand of the fact that, as in this instance, the company's capital stock and bonded indebtedness are greatly less than the existing value at normal pre-war prices of the property it has accumulated."

## WASHINGTON

### 310—Valuation

City of Monroe v. Monroe Water Company, Investigation of the Value of the Company's Property. Decision of the Washington Public Service Commission, Fixing a Valuation To be Used as a Basis For Rate Making. May 29, 1920.

This proceeding was instituted for the purpose of determining the value of the Monroe Water Company's property devoted to public use, also for the purpose of investigating the rates and service of said company.

The Commission is unable to determine the original cost of construction as the records and vouchers covering the construction period have not been found and no reliable information as to the original expendi-

tures has been available. The purchase price paid to the Monroe Water and Light Company for this property was \$30,000, and the amount expended in additions to plant since such purchase and up to December 31, 1919, as nearly as can be determined, is \$9,987.35, the entire amount of which has been charged to construction account.

The cost of reproducing the properties of the respondent used and useful in the public service in the State of Washington, as of December 31, 1919, based on 1919 prices, is \$92,575.

The cost of reproducing said properties as of December 31, 1919, based on 1915 prices, is \$49,210.

The cost of reproducing said properties, 1919 prices, less accrued depreciation estimated at 25%, is \$69,431.

The cost of reproducing said properties, 1915 prices, less accrued depreciation, estimated at 25%, is \$36,908.

The Commission says:

"It has been the desire of this Commission in valuation proceedings to endeavor to fix a valuation that represents the reasonable and proper cash expenditure necessary to provide facilities and service of the utility under investigation. In arriving at this amount the records of the company usually disclose the book cost of the property in a fairly accurate and reliable manner. It has also frequently happened that a fairly close agreement could be established between the 'book cost' of the property and the 'cost of reproduction' based on normal prices. In the present case it has been impossible to obtain the book cost above referred to. The cost of reproduction, 1915, prices, is probably the best measure of the cash investment. This amount is \$49,210.00. This amount represents with fair accuracy the cost of construction of that part of the plant built prior to 1917, but it does not make any allowance for increased cost of the portion of the plant constructed during the years 1917, 1918 and 1919. By adding to that figure, \$49,210, the increased cost over the 1915 prices of such portions of the plant as were constructed since 1915, we will have as accurately as can be determined the actual investment of the company upon which it should be entitled to make an earning. This computation gives a total of \$51,282, which is our estimate of the actual cash investment in the plant.

"Counsel for the complainant takes the position, as we understand it, that we should not go behind the \$30,000 purchase price paid for the then existing plant in 1914, holding that the \$30,000 established the value at that time. We cannot see our way clear to adopt the price paid as a basis for rate making in all cases. If an investigation shows that the price paid was the actual value of the property purchased, it could then be adopted as a rate base. We have frequently found, however, that the price paid was much in excess of the actual value

of the property purchased and have therefore declined to adopt the purchase price as the base for rate making. By the same reasoning we must decline to accept as a rate base a purchase price which is less than the actual value of the property purchased. We think the evidence is conclusive that the property was worth more than \$30,000 at the time of its purchase by Mr. Marshall. To accept the purchase price whether greater or less than the actual value of the property as a rate base would encourage improvidence in buying and discourage prudent and economical investment.

"Under the complainant's theory the value of the property as a rate base would be approximately \$40,000. Under the respondent's theory the value would be approximately \$85,000. We cannot accept either theory. Respondent through his counsel argues for the inclusion of a franchise value, contending that the franchise was purchased by an exacting consideration, namely, that of free hydrant rental, or more properly speaking, fire protection service and free water for certain other municipal purposes. We do not accept the theory that this consideration gives a value to the franchise that should be included in the rate base. The consideration for such a franchise is paid by the consumers of the utility and if a portion of the service rendered to municipality is not paid for by the city as a corporation, it must be made up by patrons of the utility in general. Such a franchise should therefore not be treated as an item to be included in the valuation of the company's property, but as a factor to be taken into consideration in determining the rates to be allowed the utility. A water company that is required to give free fire protection service must install larger mains, greater pumping capacity and greater storage capacity than would otherwise be necessary for furnishing of purely domestic water service. These additions to facilities made necessary by such free service are included in the valuation of the property of the utility and would necessarily be reflected in any rate base that the Commission may fix.

"From all of the evidence and a consideration of the various elements to which we have referred, we find that the value of all the property of this company, used and useful, in the convenience of the public service in the State of Washington, is \$51,282, as a base for rate making."

## **IDAHO**

### **224.5—Rates Fixed by Contract**

Clearwater Telephone Lines, Application For Authority to Increase Rates. Decision of the Idaho Public Utilities Commission, Granting an Increase. June 30, 1920.

The Clearwater Telephone Company filed an application for authority to make certain increases in rates and charges for telephone services alleging that the present revenues are insufficient to pay interest on

the investment after caring for operating expenses and other charges to income.

The Village of Orofino intervened and protested against the allowance of any increase in rates or charges, principally on the ground that the ordinance under which applicant is operating in said village provides that no increase in existing rates, being the rates established by said ordinance and which were in effect at the time the Public Utilities Commission was created, should be made until a total of at least 250 bona fide subscribers were served by applicant within the village limits.

The Commission says:

"The question as to whether or not Commissions may authorize an increase in rates contrary to franchise provisions has been before practically all the Commissions of the United States, and with few exceptions there is a unanimity of opinion throughout, not only by the Commissions but also by the courts, both state and federal, which have passed upon this question, to the effect that a contract entered into before or since the adoption of the Public Utilities Act is not binding upon the Commission if the rates therein contained are unjust, illegal, excessive, discriminatory and cast an undue burden upon any of the other users.

"The Commission of the State of Idaho has passed upon this matter in the case of *Taylor vs. Northwest Light & Water Company*, P. U. R. 1916A, 372, at page 396, in connection with electric energy furnished under and by virtue of special contracts that had been in effect for a long time prior to the passage of the Public Utilities Act.

"Also in the case of *Sandpoint Water & Light Company vs. Humbird Lumber Company*, P. U. R. 1918B, 535, the Commission ordered the cancellation of certain contracts carrying rates in conflict with the rates established by the Commission, stating that the right to so change contract rates was sustained by the authorities, but that it has no jurisdiction as to any matters in such contracts other than those affecting rates. The Commission came to a similar conclusion in *Sandpoint Water & Light Co. vs. Sandpoint*, P. U. R. 1918F, 737, which case went to the Supreme Court of the State of Idaho, which sustained the Public Utilities Commission as to the right of the Commission to change rates previously specified in a franchise, as follows:

"The franchise must therefore be held to have been granted and accepted, subject to the right of the State any time to exercise its reserve police power in the matter of regulating rates."

"*Sandpoint Water, etc. Co., Ltd., vs. Sandpoint*, 31 Ida. 498; 173 Pac. 972.

"In some of the earlier opinions of New Jersey's Public Utilities



Commission, that body seemed to infer that a contract entered into prior to the passage of the Utilities law could not be changed by the Commission because the Act was prospective in its scope and not retrospective. The later decisions of that Commission, however, have seemed to revert to the more common point of view, namely: that a contract or a franchise made either before or after the passage of the Act was made subject to the reserved power of the State to regulate rates, and even though such power had never been exercised, when the State saw fit to exercise it, neither the Constitution of the United States nor the constitution of the state prohibited a change in such rates if it was found that such rates were unreasonably discriminatory.

"Some of the more important cases sustaining the conclusions reached herein are as follows: *Marquis v. Polk County Telephone Co.*, (Neb) P. U. R. 1915C, 140.

"The Arizona Commission, under a statute practically the same as the Idaho Statute, has adopted the same view in *Tempe vs. Mountain States Telephone & Telegraph Company*, P. U. R. 1915D, 716.

"The California Commission, in the case of *Hollister v. Hollister Water Company*, P. U. R. 1915D, 626, has well stated the rule as follows:

" 'The California Commission has power to prescribe a charge to be paid by municipalities for water for fire protection purposes, although the franchise ordinance under which the water company was operating provided that the City should always have water free for fire protection purposes.'

Also in the case of *Re Lake Hemet Water Company*, P. U. R., 1917A, 458:

" 'The fixing of rates by the California Commission different from those prescribed in service contracts does not deprive rate payers of property without due process of law, or impair the obligations of the contracts, in violation of provisions of the state and Federal constitutions, since the contracts are subject to the reserved power of the state to alter or amend in the exercises of the power to regulate public utilities.'

Kansas has followed the same rule:

" 'Franchise ordinances requiring gas companies to furnish service free to cities in consideration for use of the streets do not interfere with the power of a Public Service Commission to fix proper rates therefor, since such ordinances are not contracts protected against impairment by the provisions of No. 10 of the Federal Constitution. *Landon v. Lawrence* (Kan.) P. U. R. 1915E, 763.

"The Wisconsin Railroad Commission, in answer to the same question raised herein, stated as follows:

" 'A city, by entering into an ordinance contract with a street railway company whereby the latter was empowered to charge a 5 cent fare, does not abrogate the right of the legislature acting directly or through the Railroad Commission to exercise the function of regulating rates whenever it is deemed proper to assert it.' *Duluth Street Railway Company v. Railroad Commission*. P. U. R. 1915D, 192. 152, N. W. 887. (Wisconsin.) w

" 'The Commission is not estopped to change or alter a contract rate merely because it has allowed such contract to go into effect.' *Re Arizona Gas & Electric Co.* (Ariz.) P. U. R. 1919D, 666.

"Our conclusion, therefore, is that the Commission has absolute jurisdiction to investigate and determine the reasonableness of any rate fixed by a contract or a franchise entered into either before or after the passage of the Public Utilities Act, and change the same if it thinks best."

### ARKANSAS

#### 781—Adequacy of Service

*H. S. Loretz, et al. v. Chicago, Rock Island & Pacific Railway Company, Complaint Against Inadequacy of Service. Decision of the Arkansas Corporation Commission, Ordering the Company to Furnish Adequate Service. June 4, 1920.*

The complainants filed with the Commission a petition to the effect that Des Arc, Arkansas, was suffering from an unreasonable curtailment of passenger and freight service over the Des Arc-Searcy Branch by the Chicago, Rock Island & Pacific Railway Company.

The Commission says:

"Upon the record in this case, the Commission concludes that it would be justified in finding that the present train service given Des Arc by the Chicago, Rock Island & Pacific Railway Company is insufficient and inadequate. Section 10 of the Act creating the Commission provides:

" 'If, in the judgment of the Commission, any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power enough reasonably to accommodate the traffic, passenger and freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at reasonable or proper time, having regard to safety, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall, after a hearing, either on its own motion or after complaint, have power to make an order directing any such railroad corporation or street rail-

road corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car or make any other suitable order that the Commission may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.'

"Under the power of regulation a state may require carriers to provide reasonable and adequate facilities to serve not only the local necessities, but the local convenience, of the communities to which they are directly tributary.

"'Lake Shore & M. S. R. Co. v. Ohio, 173 U. S. 285, 43 L. ed. 702, 19 Sup. Ct. Rep. 465; Cleveland, C. C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 44 L. ed. 868, 20 Sup. Ct. Rep. 722; Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 1, 51 L. ed. 933, 27 Supt. Ct. Rep. 585; Missouri P. R. Co. v. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330; Chicago, B. & Q. R. Co. v. Railroad Commission, 237, U. S. 220, 59 L. ed. 926, P. U. R. 1915C, 309, 35 Sup. Ct. Rep. 560; and such regulation may extend in a proper case to requiring the running of trains in addition to those provided by the carrier, even where this may involve some pecuniary loss. Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 1, 51 L. ed. 933, 27 Sup. Ct. Rep. 585; and Missouri P. R. Co. v. Kansas, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330.'

"In this case it appears that there is only one passenger train each way per day and that it arrives at Des Arc at an exceedingly inconvenient time. The incoming train, which carries practically all of the express and mail, gets to Des Arc about 6:55 in the afternoon, too late for the delivery of express that day and too late for the delivery of money consigned to the banks of Des Arc. It was testified to that the failure of the railway company's office to remain open so as to deliver money to the banks is a matter of great inconvenience to the business interests of the city of Des Arc.

"In the case of State vs. Great Northern R. Co., P. U. R. 1915D, page 467, the Supreme Court of Minnesota said: 'Pecuniary loss or profit to the carriers is important, but not the only criterion of adequate and just service. The question of reasonableness is to be determined by the condition of the interest both of the carriers and of the public.'

"The Washington Public Service Commission in the case of the Puget Sound Traction, Light & Power Company, P. U. R. 1915B, page 799, spoke as follows: 'The duty imposed upon common carriers by the Washington statute \* \* \* to render adequate and sufficient service in the transportation of passengers, is not dependent on the ability of the carrier to earn a return upon its investment.'

"The Supreme Court of our own state, in the case of Rowland v. Saline River R. Co., 188 S. W., page 696, made the following statement: 'The fact that the order of the Railroad Commission compelling the operation of one train each way daily over the railroad is likely to cause pecuniary loss to the carrier, is not in itself sufficient to make the order arbitrary or unreasonable, but it is a circumstance to be considered.'

"The New York Public Service Commission, in the case of re Long Island R. Co. P. U. R. 1919E, page 285, spoke as follows: 'The mere fact that the passenger traffic of a branch line taken by itself is unprofitable does not justify the railroad company in discontinuing it.'

"It would appear from a careful analysis of the testimony offered in this case that the business given the railroad at Des Arc is gradually increasing from month to month. There is no showing here that the cost of the operation of an additional train will be more than the earnings of this particular line afford the company. In fact there is every indication that if economically operated, additional train can be made to pay on this branch operating between Des Arc and Mesa or Des Arc and DeValls Bluff. An order requiring the operation of an additional train will issue."

## REFERENCES

### RATES.

#### 410—Cost of Service

Analysis of Costs Applicable to A Service Charge, by F. C. Freeman. Pamphlet 4 pages.

The purpose of this pamphlet is to place before the gas utilities and public an original method by which they may determine the cost of service to various classes of consumers. The information given herein specifically applies to the Providence Gas Company (April-May, 1920), but each utility can readily apply the ideas to its own situation. It is hoped that the thoughts contained herein will be of benefit both to the public and the utilities by showing them an analysis of costs and the relation of each consumer to such costs of service.

"It is to be expected that those consumers who have been paying for less than they should will protest against a service charge rate. They have been paying less than they should ever since the gas industry was established. It is a fair statement that not one of them realizes that this is so. So it is no wonder that they will complain when they are requested to pay a little more toward their fair share of costs. Policy and equity are opposed, but eventually if the gas industry is to survive there must be but one result, and that is,—Rate without Discrimination—Fair to All. \* \* \*

"With the establishment of rates by which the consumer would carry his fair share of costs or would more nearly bear such costs, it will be found that low rates will be established for the large user of gas. In the popular mind there is the feeling that the gas industry is being driven out by electric competition. This tendency would most emphatically not be so if equitable rates were established in the gas field; under proper rates it is the belief of the writer that the growth will be greater than ever before. Low B.t.u.

gas, high pressure distribution and proper rates will secure the future growth of the gas industry.

"In the analysis of costs the demand for gas by each class of consumer has been taken as the average monthly use during the year. It is recognized that such use of the monthly average is not strictly proper as it costs more to serve a consumer who uses 12M. c. f. all in one month of the year than it does the consumer who uses 1M. c. f. per month for each of the twelve months of the year, but the method employed in the analysis of this pamphlet may be adapted to an hourly, weekly or monthly actual demand if the reader desires to do so."

## COURT DECISION REFERENCES

### 224.5—Rates Fixed by Contract

*Suburban Water Company v. Borough of Oakmont.* Decision of the Pennsylvania Supreme Court. June 26, 1920.

The Suburban Water Company had furnished water to the Borough of Oakmont for fire protection since 1893. It filed its schedule with the Public Service Commission March 1, 1918, which, after due advertising, was to become effective April 1, 1918. The Borough filed a complaint to the rates there set forth, but continued to receive and use appellant's commodity, and, when sued for the price thereof, refused to pay, setting up as a defense that no contract with the municipality for this service had been approved by the Public Service Commission; and that no contract had been secured as required by the borough code. A demurrer to defendant's statement having been filed, the court below, on consideration of the matter, held the borough's position well founded and directed judgment to be entered in its favor; from this the Suburban Water Company has appealed.

The Court says:

"The Public Service Law does not recognize any right to change a rate other than a published tariff rate, either in an individual or a municipality; the rate is at all times subject to the determination of the commission that it is just and reasonable, and it may be changed by the utility in the manner prescribed by law. A conviction for charging a rate different from the tariff will be sustained, although the contract rate was the tariff rate at the time of the contract: *Armour Packing Company v. U. S.* 209 U. S. 56, 81. One rate is to be changed and that is the one fixed and published in the manner pointed out in the statute and subject to change in the only way open by the statute: *See I. C. C. v. Chicago & G. W. R. R.*, 209 U. S. 108. 'When once lawfully published, a rate, so long as it remains uncanceled, is as fixed and unalterable, either by the shipper or by the carrier, as if that particular rate had been established by special act of Congress.' *C. R. R. Co. of N. J. v. Mauser*, 241 Pa. 603, 606. The same may be said of rates of public utility companies of the State, filed and published as required by law.

"Where rates have been complained against, either before or after they become effective, the commission has power, by general rule or special order, to require the utility to furnish its consumers or patrons a certificate or other evidence of 'payment made by them in excess of the prior established rate,' and, upon petition after final order, may make a further order of reparation directing payment to the consumer of any damage sustained by him in consequence of the payment of any unjust or unreasonable rate. The utility may not of its own motion have an affirmative order approving its rates; for nowhere in the act is such authority given. The act was intended to prevent ex parte approvals having the effect of contested approvals, and the only method to test the reasonableness of a rate is by complaint filed, as was done in this case, or by proceedings on the part of the commission of

its own motion. While the investigation as to reasonableness of a rate under complaint is pending, 'the rate to be charged \* \* \* is the one fixed and published in the manner pointed out in the statute and subject to change in the only way open by the statute.' *Armour Packing Co. v. U. S. supra.* It is the effective, collectible and sueable rate, duly published as required by the act, and remains as such, governing the charges to be made pending the investigation until the commission 'shall determine and prescribe by a specific order the maximum, just, due, equal and reasonable rate \* \* \* to be thereafter established, demanded, exacted, charged or collected': section 3, article V *supra.* It is at this point, on petition for reparation, that any injustice done to consumers, pending investigation, may be worked out; but the proceeding throughout the act in this respect deals with the subject of rates and its allied practices and regulations. It does not deal with contracts.

"It is contended, however, that while this may be true as to domestic and industrial concerns, it is not true as to municipalities for the reason that the Borough Code, as amended by the Act of 1917, declares how boroughs may provide a supply of water, and that section II, article III, of the Public Service Act prescribes how contracts with municipalities may be made valid. The Borough Code specifically excepts provisions of the Public Service Act: 'Nothing in this act shall be construed to repeal any of the provisions of the Public Service Law'; if it did not, what we later say on this subject in discussing section II, Article III, would apply. This section reads as follows: 'No contract or agreement between any public service company and any municipal corporation shall be valid unless approved by the commission: Provided, that, upon notice to the local authorities concerned, any public service company may apply to the commission, before the consent of the local authorities has been obtained, for a declaration by the commission of the terms and conditions upon which it will grant its approval of such contract or agreement if at all.' This section does not control for the following reasons: The contract therein contemplated does not embody a charge for service fixed under an effective rate: By the terms of the Public Service Law, such rates have a legislative approval until, by the procedure therein determined, a different standard of charge shall be established. It will scarcely be contended a rate fixed for a given quantity of water or service is a contract, or that when a consumer uses it, there is nothing more than a mere bargain and sale at a price fixed according to law. While the language of the first part of section II is quite broad, and ordinarily would include implied contracts, of which a bargain and sale may be said to be one, when it is read with the proviso that follows, it is clear it had no relation to such transaction or sale. How can a legislatively fixed rate be the subject of 'terms and conditions,' to receive the consent of the local authorities? When you read the first part of this section with the latter part (they must both have reference to the same character of contract), the use of the words 'terms and conditions' shows that 'contract' does not relate to a purchase of water, or the like, at a price fixed in the method prescribed by the act; but pertains to contracts involving more than rate fixing, contemplating such which require, in the exercise of a deliberate, discretionary power, the consent of the municipality, as, for illustration, contracts guaranteeing quantity, time pressure, minimum requirement, to be paid for whether used or not and many other matters where the rate may be the consideration. Rate making by a public service company involves no element of consent by a municipality when made; like any other consumer it may file a complaint if aggrieved. The contracts mentioned in section II are such which must meet investigation in the special manner pointed out by the act, and, if approved, receives from the commission a certificate of public convenience, as provided by sections 18 and 19, article V, P. L. 1414 and 1415 of this act. 'When application shall be made to the commission by any public service company for any approval under any of the provisions of this act \* \* \* such approval \* \* \* shall be given \* \* \* when the commission shall determine that the granting or approval of such application is necessary for the service, accommodation, convenience

or safety of the public.' It is scarcely necessary to say that the approval of a rate is not necessary to any matter there mentioned.

"Moreover, when a rate becomes effective, it is a rate established by law. It cannot be varied by the parties and the company departs therefrom at its peril. Having satisfied every requirement of the act, it has become a collectible, sueable rate until it is set aside in the method provided in the act. It is, therefore, for the time being, a legislative rate. It clearly was not the intention to include the 'furnishing of all such service at prices, charges or rates' effective and collectible on all patrons alike, under such legislative rate to a further revisory control in municipalities in that it must consent, thus tending to destroy the scheme of the act on this subject.

"It was stated at the argument, and noted in the papers, this company had supplied the borough with water since 1893. It is entitled to the benefit of the presumption that all things were done as directed by law, and it would be fair to assume this furnishing was by a contract in existence when the change of rates was made in 1918; and, while we have held that the acts of public service companies, under the Public Service Laws, supersede the act of these companies with their patrons when they are in conflict, it is not exactly correct to say the entire contract is annulled. It may still be a contract between the parties, modified or enlarged by the acts of either the company or the commission, under the Public Service Law, and if the consumer sees fit to recognize a change, it is still a contract. All public service contracts are viewed in the light of having been made with an implied provision that the rate named therein is subject to change, according to law, so as to keep it reasonable and non-discriminatory at all times: *Pinney & Boyle Co. v. Los Angeles Gas & Electric Company* (Cal.), L. R. A. 1915C 282, 287, where it is stated that 'it will be conclusively presumed that the parties contracted in contemplation of the power of the proper board or tribunal to fix the rate in every case where such power exists and may have been thereafter legally exercised': citing *Louisville & N. R. Co. v. Mottley*, 210 U. S. 467, 34, L. R. A. (N. S.) 671; *Seattle v. Hurst*, 50 Wash. 424, 18 L. R. A. (N. S.) 168; *Portland R. Light & P. Co. v. R. R. Com.* 56 Cr. 468; *Knoxville Water Co. v. Knoxville*, 189 U. S. 434; *Buffalo East Side R. R. Co. v. Buffalo Street R. R. Co.* III N. Y. 132, 2 L. R. A. 384. All the remaining provisions of the contract remain in full force as against the parties thereto: *State v. Tampa Water Co.*, 56 Florida 858, 874, 19 L. R. A. (N. S.) 183, 189, 190. Invalidity in part does not make the whole contract invalid: *Winsor v. Com. Coal Co.*, 63 Wash. 62, 33 L. R. A. (N. S.) 63; *Packard v. Byrd*, 73 S. C. L., 6 L. R. A. (N. S.) 547; *Central N. Y. T. & T. Co. v. Averill*, 199 N. Y. 128, 32 L. R. A. (N. S.) 494; the same rule was applied to a bill of lading where a part of it became invalid by operation of law; *Whitmack v. C. B. & Q. Ry. Co.*, 82 Neb. 464, 19 L. R. A. (N. S.) 1011; and where passes have been declared illegal the carrier which had agreed to give them in consideration of the granting of the right of way was permitted to retain the fruits of the contract: *Cowley v. N. P. Ry. Co.*, 68 Wash. 558; 41 L. R. A. (N. S.) 559; the same rule was applied to a contract with a gas company; *Birmingham, etc., Co. v. R. C. Pratt* (Ala.) L. R. A. 1915 A 1208.

"The reason for this rule is simple, as shown by the many cases which hold that the change of a rate fixed by contract for the performance of service by a public utility company does not impair the obligation of the contract under the Constitution of the United States and, if it did, the change would be unlawful; *Pinney & Boyle Co. v. Los Angeles Gas & Electric Co.*, L. R. A. 1915, C. pp. 282, 287; *Knoxville Water Co. v. Knoxville*, 189 U. S. 434; *New Orleans v. New Orleans Water Works Co.*, 143 U. S. 79; *Wyandette County Gas Co. v. Kansas*, 231 U. S. 622; *Benwood v. P. S. C. (W. Va.)* L. R. A. 1915 C. pp. 261, 273; *Browne v. Turner*, 176, Mass. 9; *Union Drygoods Co. v. Georgia Pub. S. Corporation*, 83 S. E. 946, 248 U. S. 372; *Portland R. L. & P. Co. v. Portland*, 200 Federal 890; *Bullard v. Northern Pacific Ry. Co.*, 10

Mont. 168; *Southern Wire Co. v. St. Louis Bridge & Tunnel Railroad Co.*, 38 Mo. 191; *Fitzgerald v. Grand Trunk R. R. Co.*, 63 Vermont 169; and see *Foltz v. P. S. C.*, 73 Pa. Superior Ct. 24. The contract is simply modified or reformed so as to include for the time being the new rate fixed by law. The power to reform contracts of this kind was granted under the act of 1874, giving the courts jurisdiction over rates; *Turtle Creek Borough v. Penna. Water Co.*, 243 Pa. 401, 408, and see a learned discussion of the effect of the *Turtle Creek* case in *S. P. Ry. Co. v. S. V. Water Co.*, L. R. A. 1917, pp. 680, 684.

"Our own cases and those from other jurisdictions throughout the United States hold the charge in rates, so as to make them reasonable and non-discriminatory, is not an impairment of the obligation of a contract to be performed by a public utility company. It is beyond the power of the contracting parties to fix the rates permanently, and the contract remains in full force and effect, binding on both parties as long as obligation is unimpaired. See opinion of Chief Justice Brown, not yet reported, *Scranton v. P. S. C.*, for a discussion of the theory upon which this principle rests.

"The cases of *V. & S. Bottle Co. v. Mountain Gas Co.*, 261 Pa. 523; *Leiper v. B. & O. R. R. Co.*, 262 Pa. 328; and *Central R. R. of N. J. v. Mauser*, 241 Pa. 603, do not in any way affect the conclusion just reached. In these cases this court held that an illegal rate could not be enforced, and decided nothing inconsistent with our present decision. These rulings are in perfect accord with the cases cited, *supra*. If they are to be construed to support a position that the whole contract is invalidated by the change of rate, then the obligation of the contract is impaired and the change of the rate is unconstitutional. There is, however, no impairment of the obligation, but merely a fixing of the rate to be charged for the service, which rate could only be legally fixed by the parties so long as it was not fixed by the sovereign power of the Commonwealth, and the parties are presumed to have included this provision in their contract.

"But whether there was, or was not, a contract, under the Public Service Act, when the Company has changed a rate in accordance with the provisions of the law, that rate, on the day advertised, is an effective rate, suable and collectible, and it is not governed or controlled by section II of article III. But it has been said, if we permit public service companies to collect rates which may thereafter be determined unreasonable, the interests of the municipality may be jeopardized, as may its other patrons, in that they may never be able, because of the company's insolvency, to be recouped of excess payments thus made. As the case is now presented, it is sufficient for us to say there is no allegation that this company is not financially responsible for any damages occasioned by the excess payments. Under the very broad powers given to the commission by section 27 of article V, the commission may enforce, execute and carry out, by its order, all the provisions of the act relating to the duties and limitations of public service companies, including the obligation to make reparation, and no court would think of declaring an act of the commission unjust and unreasonable which would require from a public service company, subject to the commission's approval a bond to indemnify its patrons against loss where there is danger of the company's insolvency. We propose to apply the spirit of such an order in this case. The court below was in error in holding that the Borough Code and section II of article III, controlled the question before it.

"The judgment of the court below is reversed and it is directed that judgment be entered for plaintiff unless defendant shall within ten days file an affidavit of defense to the merits of the claim, if any they have. If, upon any judgment secured by plaintiff, there is an application for a mandamus execution to enforce payment, this process will be under the control of the court."



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# RATE RESEARCH



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**Rate Research**

**Vol. 17**

**AUGUST 5, 1920**

**No. 19**

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# Rate Research

Vol. 17

New York, N. Y., August 5, 1920

No. 19

For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### MONTANA

#### 300—Investment and Return

Helena Light & Railway Company, Application for Authority to Increase Its Gas and Street Railway Rates. Decision of the Montana Public Service Commission, Granting an Increase in Gas and Street Railway Rates and a Decrease in Electric Rates. May 10, 1920.

Coincident with the filing of the application for an increase in street car fares, the Helena Light and Railway Company, on July 5, 1918, filed with the Commission a separate and distinct application for an increase in its rates for gas, alleging that " \* \* \* by reason of the greatly increased cost of maintenance and operation and likewise by reason of a loss of patronage and the increased price per ton of coal, from which the gas is produced, and the increase of freight rates, the expense of maintaining and operating petitioner's gas plant is far in excess of the revenues derived therefrom."

The Commission was requested to authorize a rate of \$2.50 per thousand cubic feet of gas. Thereafter, and on the 22d day of August, 1918, a hearing was had on this application. The evidence submitted thereat by all parties in interest was of little or no value to the Commission in its effort to determine and authorize reasonable rates for the gas utility. Independent investigation by the Commission following the hearing revealed the necessity of a physical valuation; in fact, such a course was indispensable to a lawful conclusion in the premises. Accordingly, on September 24, 1918, the Commission ordered the company to make a comprehensive and complete physical valuation of all the property devoted to the operation of the gas utility.

Having the street railway and the gas utilities of the company under investigation as above outlined, and entertaining the conviction that the electric department, in which no rate increase had been sought by the company was in fact carrying the burden resulting from operating deficits, claimed in the other two departments, and further in view of the operation of these three utilities by one company, their consequent managerial intimacy, and the additional fact that two of them—the gas and the electric utilities—were natural competitors, the Commission

determined on making a like comprehensive rate and valuation investigation into the electric utility. On January 27, 1919, this Commission, on its initial motion, initiated an investigation into the reasonableness of the company's rates for electric energy. The company was directed to furnish the Commission a separate physical valuation of the electric utility.

Three separate appraisals were submitted by the company: a. Valuation of the railway property; b. Valuation of the gas property; and c. Valuation of the electric property.

### 315.1—Going Value

Regarding the proper allowance which should be made for "going value," the Commission says:

"Counsel for the state urge us to allow a going concern value to the electric utility only, and this on the theory that that utility is the only one on a paying basis, which fact is conceded. The Public Utility Reports of court and commission decisions, the works of text-writers, and selected papers of valuation engineers all contain a mass of discussion on the subject of 'going concern value.' It was not until 1915, however, that the Supreme Court of the United States considered the subject in a 'rate case.' In the Knoxville Water Company Case, 212 U. S. 1, decided in 1909, the Court said of an allowance of \$100,000 for 'organization, promotion,' etc., and \$60,000 for 'going concern':

"We express no opinion as to the propriety of including these two items in the valuation of the plant, for the purpose for which it is valued in this case, but leave that question to be considered when it necessarily arises. We assume, without deciding, that these items were properly added in this case."

"In 1915 the Court speaking through Mr. Justice Day said:

"That 'good will' in the sense in which that term is generally used as indicating that element of value which inheres in the fixed and favorable consideration of customers, arising from an established and well-known and well-conducted business, has no place in the fixing of valuation for the purpose of rate-making of public service corporations of this character, was established in *Willcox vs. Consolidated Gas Co.*, 212 U. S. 19, 52. "Going Value," or "going concern value," i. e., the value which inheres in a plant where its business is established as distinguished from one which has yet to establish its business, has been the subject of much discussion in rate-making cases before the courts and commissions. Many of these cases are collected in Whitten on "Valuation of Public Service Corporations," Pars. 550-569, and the supplement to the same work, Pars. 1350-1385. That there is an element of value in an assembled and established plant, doing business and earning money, over one

not thus advanced, is self-evident. This element of value is a property right and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to a public use. Each case must be controlled by its own circumstances, and the actual question here is: In view of the facts found, and the method of valuation used by him, did the Master sufficiently include this element in determining the value of the property of this company for rate-making purposes? \* \* \* When, as here, a long established and successful plant of this character is valued for rate-making purposes, and the value of the property fixed as the Master certifies upon the basis of a plant in successful operation, and overhead charges have been allowed for the items and in the sums already stated, it cannot be said, in view of the facts in this case, that the element of going value has not been given the consideration it deserves and the appellant's contention in this behalf is not sustained.' *Des Moines Gas Co. vs. Des Moines*, 238 U. S. 153, 164, 165, 171. Decided June 14, 1915.

"And in 1918 the Court, speaking through Mr. Justice Pitney, said:

"The report of the special Master shows, what is not disputed, that his investigation of the matters referred to him was most painstaking and thorough. \* \* \* He found the plant to be in excellent condition, supplying water abundantly in excess of the needs of the community and under a proper pressure, and found its entire value to be \$13,415,899, in which the only elements seriously questioned by the city were: (a) The disputed water diversion rights, which he held to be the property of the company and valued at \$1,998,117; and (b) an item of \$800,000 for "going concern" value, allowed by the Master upon the ground that the company had "an assembled and established plant doing business and earning money, according to the principle laid down by this Court in *Des Moines Gas Co. vs. City of Des Moines*, 238 U. S. 153, 165. \* \* \* The Master's report shows that no question was made before him but that the plant should be valued as a plant in use, except as it was contended that the item of \$800,000 for going concern value ought to be eliminated on the ground that such an element of value, admittedly existent in a "purchase case," could not be considered in a "rate case," and on the further ground that the company's franchise had expired. \* \* \* What we have said establishes the propriety of estimating complainants' property on the basis of present market values as to land, and reproduction cost, less depreciation, as to structures. That this method was fairly applied by the special Master hardly is disputed by appellants except as they contest the items allowed for "going concern value" and for the water rights acquired by complainant and its predecessors by original appropriation. With respect to the former item we adhere to what was said in *Des Moines Gas Co. vs. Des Moines*, 238 U. S. 153, 165: "That there is an element of value

in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use." As was then observed, each case must be controlled by its own circumstances. In the present case, the Master expressly declared that his detailed valuation of the physical property and water rights included no increment because the property constituted an assembled and established plant, doing business and earning money; and a careful examination of his very elaborate report convinces us that this is true. The amount allowed by him on this account is not open to serious question from the standpoint of appellants.' *Denver vs. Denver Union Water Co.* 246 U. S. 178, 183, 184, 185, 186, 191, 192; decided March 4, 1918.

"Since these decisions there can be no question of our duty to make an allowance for 'going concern value' in a rate case involving an established utility, and here we must be careful to determine what going concern value is: 'The value which inheres in a plant where its business is established, as distinguished from one which has yet to establish its business.' The test is whether the bare bones are assembled in place, connected to function, and, under human management, in motion rendering service to a dependent clientele. Neither the absence of good will nor of remunerative returns necessarily disparages the reality of going concern value. Consumers may be positively hostile to the plant which may just be able to meet operating expenses, and yet the plant possesses 'going concern value' because its business is established.

"Our discussion of the subject last in the order of treatment of overhead charges is not to be taken as an indication that we have not considered the element and given it proper weight until this time. The contrary is the fact. We have given the matter careful attention from the inception of our study, bearing the element constantly in mind, for it is not an isolated thing like a building, a dynamo or a car which may be severed from the plant aggregate, but inheres in a combination of the physical structure and the managerial efficiency united in operating the business. Accordingly, in taking our averages for physical values, and in making allowances for overheads we have considered the element of 'going concern value' and given it allowance for every dollar we think it worth. That this allowance does not approach the \$145,427 claim of the company is due to opposing factors, which have prevailed against the engineer's process of arbitrary addition. The fact that the inception cost entering into the establishment of the company's 'going concern' has long since been incurred and very probably has been wiped out, or should have been, that these utilities had an established business when purchased by the Helena Light and Railway Company, which must have been

taken into account in the purchase price, and that the application of the hypothetical reconstruction or reproduction formula adopted by both engineers unquestionably liberalizes 'prudent investment,' makes against arbitrary addition of the amount submitted, or any arbitrary addition. Moreover, as will be presently shown, since additions and extensions have been paid for out of operating expenses and added to the capital account, 'business establishment' has been a contribution of Helena consumers and not of investors. *cmshrem sh cm cm Union Telephone Co.*, PUR 1920-B 813, 827-833; *Coudersport, vs. Consolidated Water Co.*, PUR 1919-F 196, 207.

### 360—Depreciation

The Commission's engineer determined the amount of depreciation by using the life and age theory supplemented by inspection and apparent condition in cases where the age was not of record. Where the life and age theory alone was used he first ascertained the age and expected life, as determined from approved mortality tables and applied the "straight line" formula as a measure of the accrued physical depreciation. The company's engineer, however, used what he termed "completed depreciation." By this method he paid no attention whatever to the expected life of the property, or the number of years it had been in use, but by inspection and observation determined the amounts that should be spent in order that the property might render efficient service. Under this theory, as long as any unit is able to function, no deduction whatever is made for depreciation.

The Commission says:

"If this Commission failed to give full force, in this valuation proceeding, to the capital distribution here so clearly emphasized, by not making proper depreciation deductions, it would perpetuate the inequitable practice so long persisted in by the company. This it will not do.

"Bearing in mind the contentions stated, the engineering methods employed and the facts of this particular company's practice, all with respect to depreciation, we proceed to assign these factors their proper influence, if any, in determining the extent to which depreciation affects valuation. We say 'in determining the extent to which depreciation affects valuation,' for we know not only from the evidence in these proceedings but from personal inspection that depreciation is here a reality. To say that little or no value has disappeared from the plants of this company by reason of wear and tear, decay, obsolescence or inadequacy would be to ignore the whole history of the three utilities which, today, are in some parts of their physical structure identical with their earliest predecessors of thirty years ago, and in most parts identical with the plants acquired by the present company in 1905. We do not understand that counsel for the company denies the wasting effect of use, of time, and exposure to the elements, so far as physical value goes, but he urges that if

the plants are operating at 100 per cent efficiency notwithstanding their physically deteriorated condition, no deduction should be made in investment value. Deductions must be graded only on the percentage of operating efficiency below the norm. And his estimates place these utilities only slightly below 100 per cent in operating efficiency. It should suffice to reply that the evidence we have before us proves that accrued depreciation has not only lessened the useful life of the existing units as compared with new units, but has also lessened the present operating efficiency of particular units of each utility, and each utility as a whole. This lessening in operative efficiency is not imperceptible; but it is explicit, patent and capable of more or less precise ascertainment.

"The company's argument has been met with before and similar disposition made thereof. We cite two well-considered cases:

" 'Thus far we have been concerned with the cost to reproduce certain physical property as if it were entirely new. But that property is not new. Certain parts are practically new, but by far the greater proportion has been in use several years, and some of it is dilapidated, badly worn, obsolete, and in need of replacement. Nevertheless, the applicants maintain that no deduction should be made because of this fact and that the present value of the property is at least equal to its cost when new. \* \* \*

" 'The property is just as valuable to the public whom it serves as though it were absolutely new, for it is now operating at a high degree of efficiency; and it is just as profitable to the owners, for it is earning just as much as a company could which has the same property absolutely new. And from its earnings will be replaced its parts as they economically require replacement in the future, as parts have been likewise replaced in the past.

" 'As a matter of fact, replacements have not always been made out of earnings in the past; but passing that for the moment, the argument is three fold. The property is claimed to have a value as great as when new because—

1. It serves the public as efficiently as when new;
2. It earns as much as new property;
3. It will be replaced out of earnings when replacements become necessary.

" 'In the first place it is doubtful whether the public gets as good service from an old plant as new. Personal observation indicates that a new property—new cars, new track and new paving—would give better service to the public. An assertion that the public is getting the best possible service from the horse car lines cannot be seriously considered.

" 'It is also very doubtful whether the property earns as much as new property. Obviously, the applicants must refer to net income



—what remains after all operating expenses have been paid, including repairs, maintenance, depreciation and taxes, for the statement would be of little importance if reference were made to gross earnings. It must also be assumed that other factors are constant and do not affect the results. Ordinarily, the net earnings of a new system are less than those of the same system after it has been in operation several years, because traffic increases, and as traffic increases the cost per unit of service decreases and net earnings increase. But if such conditions remain unchanged, the cost of performing the same amount and kind of service would increase. Repairs increase with age; machinery works less efficiently after considerable use; worn rails and joints affect the cars. The substitution of new equipment upon certain lines of the Metropolitan and Third Avenue systems brought down the cost of car operation. As the cars grow older, the cost must increase, unless offset by other factors. \* \* \*

“But suppose we assume that a street railway system that is not new does serve the public as efficiently as when new, that it earns as much and that replacements will be made out of current income. Does it follow that the property is as valuable as when new, and that its fair value is its original cost?

“Present efficiency should not be confused with value, and the character of service being rendered does not determine value. It is rather the amount of service remaining or the length of term that a thing will continue to operate efficiently. \* \* \* To accept the theory of the applicants requires that one believes that property has full value up the very moment it disappears, and then instantly drops to zero.

*(To be continued in next week's issue of Rate Research.)*

## CALIFORNIA

### 300—Investment and Return

Santa Barbara Telephone Company, Application For Authority to Increase Its Rates. Decision of the California Railroad Commission, Granting an Increase. May 5, 1920.

The Santa Barbara Telephone Company filed its application asking for an investigation into all of its rates and for an order establishing such increases as might seem just and reasonable under the circumstances.

The telephone properties of the applicant represent a consolidation of several telephone companies heretofore operating in Santa Barbara County.

A valuation was filed by the company at the hearing in these proceedings as of August 31, 1919, showing a total figure of \$772,289.89. This figure was reached by taking the Commission's engineering depart-

ment's valuation in the consolidation proceedings as of June 30, 1915 (reproduction cost less depreciation), and adding thereto undepreciated additions and betterments and then deducting retirements to August 31, 1919. The investment figure in the annual report, as also the valuation figures referred to, includes a certain amount of duplicate property resulting from the consolidation. There is not available a detailed estimate of the amount and the value of such duplication in property. It appears from the record that a portion of this duplicate property has been retired by the company since the date of consolidation or excluded from the valuation submitted by the company in this proceeding. It is apparent, however, that the greater portion of the duplicate plant is still in existence and included in the investment and valuation figures.

The Commission says:

"In this matter of duplicate property the Commission in Decision No. 3747 says:

" 'In passing on the amount of securities which Santa Barbara Company may reasonably be authorized to issue for the properties which it is to acquire, consideration must also be given to the fact that a considerable amount of duplication exists in the properties which are to be acquired, particularly in the matter of poles. While petitioners report that the property of city company and of county company which will be rendered inoperative by reason of the consolidation has a structural value of only \$6,554.38, with a net salvage value of \$1,483.46, and that the property of Pacific company which is not to be sold, exclusive toll lines, has a "structural value" of only \$15,083.91, the testimony in this proceeding as well as a casual inspection of the existing properties in the city of Santa Barbara shows clearly that there is a much larger amount of duplication in the properties to be acquired by Santa Barbara company than these figures would indicate. In fact, the total duplication reported by petitioners under the head of poles, would seem to be only an item of \$133.79 in the Carpinteria exchange. Petitioner's own testimony that it expects as soon as possible to remove the duplicate poles from the streets of Santa Barbara and the other towns affected, shows clearly the real situation. In other words, if a single telephone system were being installed to do the work which is now being done by the systems of the three existing telephone companies, a very material saving in the number and cost of poles as well as certain other items of property would unquestionably be made. We can not agree that in determining the amount of securities which shall be authorized, the amount should be issued against the structural value of the combined properties of Pacific company, city company and county company, without reference to existing duplication of property. If losses arise from this situation, they should be borne by the utilities which have created the duplication and not by the public.'

"The conclusion of the Commission that losses arising from duplica-

tion of plant in consolidated properties should not be entirely and permanently borne by the public, appears to me sound. The amortization of such property in a reasonable time out of earnings appears to be the best and most logical way to eliminate duplicate plant and such abnormal operating expenses as result from duplicate plant.

"It seems desirable that the amount of duplicate property less its salvage value should be ascertained by applicant and by the Commission's engineers and that the amount so jointly ascertained, amortized over a period of years, should be written off applicant's capital account. Arrangements should be made by applicant to remove within a given time such duplicate plant as increases operating and maintenance expenses."

### 360—Depreciation

The basis of depreciation charges in applicant's last annual report is given as follows: "Purely an arbitrary figure. Amount credited to above account during 1919 represents that portion of earnings available after paying operating expenses."

Commissioner Loveland, in his opinion, says:

"I consider such a policy in the treatment of the depreciation fund unsound. It is the Commission's purpose to fix such rates as will allow this public utility, as all others, adequate operating expenses, a reasonable allowance for depreciation and a fair return, if the conditions are such that a fair return is possible considering the nature of the service. In the rates set up for this utility all three of these items have received proper consideration. It is apparent that operating expenses, including, as they do, compensation for employees and costs of labor and material, are a first charge on all income and must come ahead of all other charges. Next in order are taxes. The setting aside of the depreciation annuity must follow immediately after these two prior items and in the very nature of things must come ahead of fixed charges, dividends and other similar items.

"The assumption that depreciation may be taken care of out of surplus and only at such times and to such an extent as, in the opinion of the utility, the surplus may permit of deductions for this purpose, rests upon a fundamental error. It is in violation of a sound public utility policy both from the standpoint of permanent good to the public utility owner and to the public consumer, as indicated by the Public Utilities Act in section 49, which reads in part as follows:

"\* \* \* the Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascer-

tained, determined and fixed, and shall set aside the money so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purpose and under such rules and regulations both as to original expenditure and subsequent replacement as the Commission may prescribe. The income from investments of moneys in such fund shall likewise be carried in such fund.'

"The question is of much importance to the telephone users and rate payers of this utility. I am satisfied that good service cannot be permanently maintained unless an actual depreciation fund is created and properly administered. The main point is not whether the annual payment into the fund as estimated by our engineering department is exactly correct or whether it is too high or too low. As a matter of fact, the amount fixed must be in the nature of an estimate and will be subject to corrections in the future as the facts which should govern are more definitely ascertained. But it is of prime importance that whatever amount is set aside be held strictly for the purposes for which it is intended and be administered in accordance with proper rules under the control of this Commission.

"I recommend, therefore, that the applicant set aside, as a trust fund, in monthly installments of \$2,750, a depreciation fund of \$33,000 per annum to be used only for purposes of insuring against depreciation and under rules to be approved by the Commission. The applicant should submit to the Commission such rules governing the depreciation fund as it believes will best meet the requirements, and after these rules have been approved by the Commission they should go into immediate effect."

## ILLINOIS

### 630—Cost of Supplies

Public Service Company of Northern Illinois. Application for Authority to Increase Gas Rates in Ottawa. Decision of the Illinois Public Utilities Commission, Granting an Increase. May 11, 1920.

In granting authority to the Public Service Company of Northern Illinois to increase its rates for gas service in the cities of Ottawa, Marseilles, Seneca, Morris and Streator, the Commission says:

"With reference to the rates filed as to whether they should be considered by the Commission as temporary emergency rates on account of the war, or permanent rates, counsel representing the company (record September 13, 1918, page 30), said:

"'Nearly all the measures that are passed upon by Utilities Commissions are based upon the duration of the war. We feel that these increased expenses will naturally exist for a considerable length of time after the war, and we feel that it is positive that increased expenses will continue for such a long period of time and that the

State Utilities Commission will have had ample time to adjust the rates, that these increases that we are asking for should not be considered temporary relief. They should be considered as a part of the company's permanent rates, and that any order that the Commission might give should not be for merely a year or until the end of the war. \* \* \*

"In docket case 8686, which is an application of the Public Service Company of Northern Illinois to advance rates for general gas service in Arlington Heights and 47 other communities in the State of Illinois, the Commission said:

"The testimony shows that the petitioner has submitted exhibits containing figures supplemented by testimony which show the operating expenses for the year 1918, the revenue received for a like period, sundry data pertaining to the cost of gas production and estimates of what in the judgment of the company would be the increased cost of gas production for the year 1919. The petitioner has submitted no inventory of its gas property, no income account, no general balance sheet, and no cost or book value of the property used and useful in rendering gas service; nor has the accounts of the various utilities been segregated.' \* \* \*

"In disposing of the application of the Public Service Company of Northern Illinois, docket case 8686, *supra*, the Commission said:

"It may well be said that if a complete investigation were made of the operations of the petitioner covering gas, electric, water and heating service, taking into consideration the value of the property, the cost of rendering the various services, the revenues received therefrom, it would be shown that the rates charged gas consumers were insufficient in comparison with other classes of service, but it is not possible to determine that fact from the record in this proceeding. The Commission would not be justified in imposing upon the gas consumers increased rates for gas service, merely upon the showing made of the operating cost for the past year, supplemented as it may be by estimated increases in the cost of labor and material in the year 1919.'

"It should be noted that the Commission denied relief on the grounds that the company in that case was asking for emergency relief, in which, taking the business as a whole, it appeared that they were not entitled to the relief asked. The Commission further held that if a sufficient record were before it, in which the merits of the case could be determined, that it might well be shown that the rates for gas service were insufficient when considering this class of service by itself. \* \* \*

"Inasmuch as the Public Service Company of Northern Illinois is seeking permanent relief as to rates received for gas now furnished to municipalities involved in this proceeding, it is obvious, in accord-

ance with the principles heretofore laid down by the Commission, that the Commission cannot dismiss this application for an increase in rates on the ground that the business of the company as a whole is earning sufficient revenue, but must dispose of the issues in accordance with the principles laid down by the United States Supreme Court, in the Northern Pacific Railway Company v. State of North Dakota *et rel.* McCue, *supra*, and so finds. \* \* \*

"The evidence shows that the operating expenses, in general, have increased since 1915. In production expense the cost of labor has increased, while material advances in the cost of coal, coke and oil are shown. Other materials used in the operation of the plants were also higher in 1917 and 1918 than during previous years.

"The evidence further shows that the net production cost of gas sold in the Ottawa system has increased from 48.3 cents per thousand cubic feet in 1916 to 79.5 cents for the first seven months of 1918. In addition to the increased cost of labor and material entering into the production of gas in this system, there is included a cost of 16.9 cents per thousand cubic feet for unaccounted for gas. This item, amounting to approximately 20 per cent of the gas made, appears to be excessive, and the consumers, to the extent that it is excessive, should not be burdened with the charge.

"The rate schedule at present in effect in the municipalities involved in this proceeding are uniform. The petitioner, however, is asking for the establishment of a rate which provides for 10 cents additional per thousand cubic feet for the first 3,000 feet of gas sold in Marseilles, Seneca and Morris, over and above the rate asked for in Ottawa and Streator. In support of its application for a higher rate for consumers in Marseilles, Seneca and Morris, the petitioner contends that the cost of rendering gas service over a high-pressure line is greater, due to the investment required and the greater cost of maintenance. No figures, however, were submitted to substantiate this contention. The Commission, therefore, would not be warranted in establishing a rate for Marseilles, Seneca and Morris in excess of that for Ottawa and Streator without a detailed statement showing all of the charges properly allocated."

## REFERENCES

### PUBLIC SERVICE REGULATION

#### 252—Commission's Annual Reports

Hawaii Public Utilities Commission Seventh Annual Report For the Year 1919. 40 pages.

The report of the Public Utilities Commission of Hawaii for the year ending December 31, 1919, contains the formal and informal complaints, and the opinions and orders handed down during the year.

## GENERAL

## 950—Progress in the Art

Growth in Central-Station Customers. *Electrical World*, July 24, 1920. p. 161, 3 pages.

In an endeavor to ascertain the comparative growth of the three classes of central-station customers—residential lighting, commercial lighting and power—the *Electrical World* has undertaken a survey of this phase of the industry extending back through the year 1914. Table 1 gives an estimate of the various classes of customers by states, based upon the returns from the central stations and the assumption that companies not reporting experienced a growth similar to those reporting. Several of the large companies do an interstate business, and where this is known to be the case the customers have been proportioned to states involved in accordance with the estimated population served.

The total number of customers of all classes increased from 4,716,600 in 1914 to 8,520,400 in January 1, 1920, a growth of 81 per cent in six years. The Middle Atlantic States, consisting of New York, New Jersey and Pennsylvania, show the largest percentage increase in this period, with 104 per cent, and the Mountain States show the lowest percentage increase, with 50 per cent.

Some slight differences will be found in the number of residential customers from that given in an article entitled "Electric Service in the American Home," which appeared in the *Electrical World* for May 15, 1920. The most notable corrections is for the State of Michigan. This is due to the unexpectedly large growth in the population of Detroit and surrounding towns, the number of residential customers in which was estimated in the previous article. The slight increases in each state over the previous estimate are due in most cases to the existence of more than one customer per house, especially in the large cities.

"The commercial lighting customers include stores, offices, churches, halls, amusement parks, etc., and in some cases manufacturing plants. Commercial lighting customers have increased from 3,434,900 in 1914 to 6,517,600 in 1920, a growth of 89 per cent. The Middle Atlantic States show the largest percentage increase with 129 per cent, followed by New England with an increase of 105 per cent. The Mountain states show an increase in this class of customers of only 40 per cent.

The number of customers does not give a correct indication of the amount of electrical energy sold by the central stations to each class of customers. This is particularly true with power customers. One power customer may use 20,000,000 kw.-hr. per year, while another power customer may use only 10,000 kw.-hr. per year, depending on the type of plant in which the energy is used. Again, one industrial customer may, and often does, buy energy in bulk from a central station, the purchased energy being used in many of the company's factories, mines, etc., and also used for lighting.

The increase in the number of power customers, therefore, cannot be considered as a true indication of the growth in the power load of the central station. It does, however, give an index to the extent to which the central station has become the source of power for the industrial world in so far as number of consumers is concerned. The *Electrical World* has under way at the present time an investigation to determine the actual amount of electrical energy supplied by the central station for power purposes.

The power customers have increased from 195,700 in 1914 to 326,800 in 1920, an increase of 67.2 per cent.

Fig. 1 shows graphically the growth of the three classes of electrical customers by years, and also gives an estimate of the probable number of customers in

1925 in each class. The latter figure was obtained by extending the growth curves of each class of customers, as shown in Fig. 3. Fig. 2 shows graphically the growth in lighting customers, both residential and commercial, for the various sections of the country, and also includes an estimate of the number of customers in 1925.

## COURT DECISION REFERENCES

### 224.5—Rates Fixed by Contract

*Murray City v. The Utah Light and Traction Co., and the Utah Power and Light Co.* Decision of the Supreme Court of Utah. July 6, 1920.

The plaintiff seeks the enforcement by the court of an ordinance revoking or forfeiting the right of defendants to operate a street car or interurban railway over the main street of Murray City.

The right to construct and operate the street railway through such city was granted to the predecessor of the defendant, the Utah Light & Traction Company, by the City Council of said City on March 23, 1909.

The Court says:

"The objection to the constitutionality of the Public Utilities Act and the orders made by the commission are sufficiently discussed and determined by this court in *Salt Lake City v. The Utah Light & Traction Company, ——— Utah ———*, 173 Pac. 556. In that case the ordinance in question here was involved. It, as pointed out in that opinion, the State, by reason of its right as a sovereign, retained the power to modify or annul a rate or fixed charge for services rendered by a public utility such as the Utah Light & Traction Company and that any order regularly made by such commission is a legal and binding order, it must follow as a necessary corollary that such an act on the part of the State through a commission authorized by the legislature would in no way, affect other rights secured to either party by the terms of a contract such as the franchise ordinance in question here. It is not questioned that the city authorities have and had the right to grant to the defendants or their predecessors the privilege to operate a street railway upon the streets of such city. Neither is it questioned that the right exists to prescribe conditions or limitations under which such privilege may be exercised. The power, however, to fix the fare to be received by the utility, or the defendants in this action, is retained by the State and can be exercised by it whenever the necessity requires action upon its part. *Salt Lake City v. The Utah Light & Traction Company, supra.* \* \* \*

"It evidently was the intention of the plaintiff at the time of the institution of this action that the chief and principal grievance was the fact that the defendant traction company had increased the fare for services in transporting passengers to a greater amount than as provided in the franchise ordinance and that the acts of the Public Utilities Commission in authorizing such increase were violative of the contract existing between the city and defendants and therefore prohibited by the constitution. That contention, however, as was determined by this court in the case referred to, is untenable. \* \* \*

"It is sufficient to say that the law does not favor forfeitures and any party to a contract insisting upon a forfeiture of the other's rights thereunder must show a literal compliance with all provisions of the contract giving him such right, otherwise relief will not be granted. *Camp Mfg. Co. v. Parker*, 91 Fed. 705, See also 12 R. C. L., p. 2031 18 C. J., p. 279, Sec. 438."



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# RATE RESEARCH



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### OREGON

#### 300—Investment and Return

Douglas County Light & Water Company, Application For Authority to Increase Rates for Electric and Water Service, Decision of the Oregon Public Service Commission, Granting an Increase. July 13, 1920.

The Douglas County Light & Water Company applies to the Commission for permission to increase its rates for water and electric service. For the purpose of better advising the Commission in this regard, a demand was made upon the company to furnish detailed information as to its capitalization, funded and other indebtedness, and franchises, and to supply an inventory of its property used or useful for the service of the public, and to state the cost thereof, the estimated amount of money it would normally require to produce in kind each unit in normal new and useable condition, and the depreciation which had accrued thereon; the earnings and expenses from utility service and from other sources; the total units of consumption and number of each class of customers served; together with the fixed charges, taxes and other charges to be met by the utility.

#### 224.5—Rates Fixed by Contract

It is contended by counsel for the city that by reason of certain charter and franchise provisions the Commission is powerless to interfere with the applicant's water rates either for domestic use or for municipal fire protection.

The Commission says:

"Regarding our authority to establish rates for municipal fire protection in contravention of franchise provisions of the city we desire to say that the decision of the Supreme Court of this state in the case of the City of Hillsboro vs. Public Service Commission of Oregon et al, decided since the hearing had hereon, has fully disposed of this issue, the Commission's order fixing such rates having been upheld.

"In that case the Court said: 'The utility was and is engaged in furnishing water, not only to the people of cities directly but in-

directly by contract with the cities for water service for fire protection. If the water company entered into a contract with a private corporation to supply it with water at a special rate regardless of when the contract was made, there is no doubt but what the Commission may, upon appropriate proceedings change the rate of compensation provided in such private contract. If the City of Hillsboro entered into a contract, special in its character, either before or after the passage of the utilities law, fixing a compensation for private service, such contract would be subject to revision by the Commission. The utilities can not have contracts for any portion of its service whether it be with the public at large for domestic use, or for private corporations upon special contracts, or with cities and towns connected with its system, but what it will constitute a part of its service and would affect its income and but what would be subject to revision or modification by the Commission. \* \* \*

#### 311.2—Reproduction Cost New

Regarding the valuation of the Company's property, based upon present day prices, the Commission says:

"The value arrived at by the application of this method is naturally an exceedingly high one. Rates for utility service, based upon a valuation of this kind, would, at this time, be very high compared to those which would have been considered reasonable three or four years ago measured by the same method of valuation. The use of such a value for rate making is not in conformity with the generally accepted theories of public utility operation and regulation.

"Every public utility is delegated the duty and right of performing a particular public service. As compensation for the service performed, the utility is entitled to a reasonable return upon the amount of money prudently invested in the public service. The utility should thus be assured against the uncertainty that confronts a private concern, and speculative features should be almost entirely eliminated. The public reaps the benefit from this arrangement in the form of constant and continuous service more stable and lower rates.

"Under the theory advanced by the applicant, when construction material and construction labor prices rise, the rate base value must also increase correspondingly; when these prices decrease, the rate base value must fall. The return to the utility thus becomes speculative, the compensation demanded by the investor increases correspondingly, and the utility is placed on a plane with private speculative enterprise.

"While the figures presented by the applicant are of importance in this proceeding and merit the consideration of the Commission, yet they are but an element in the determination of a rate base.

"The valuation prepared by the engineering department of the Com-

mission is what may be termed a historical reproduction cost, and approximates as closely as possible the actual original cost of the property now of use and useful in the public service. This so-called historical reproduction cost is obtained by the adoption of actual costs, wherever possible of verification, and by the application of the estimated current costs of material, labor and other incidental expenses of installation, as of the time of construction, to each unit of the remaining physical property. This method of valuation, approaching as it does more closely to the actual investment than can be obtained in any other method, in our opinion is the most important factor in fixing valuations for rate making purposes. In order that good management should be encouraged, and especially that the public should not be charged with providing a return upon money lavishly or improvidently spent, this 'historical reproduction cost' should be limited to the amount of investment honestly and prudently made at the time of construction.

"In direct contrast to the fluctuating rates which would logically follow from using reproduction cost as of any particular date of valuation, the historical method tends toward stability of rates. When replacements are made at a higher price than the original unit, this increased investment is reflected directly in this historical reproduction cost. \* \* \*

### 360—Depreciation

"There has been in previous cases before this Commission, much and varied testimony concerning the manner in which depreciation occurs. Although its actual manifestation is generally more rapid in the later portions of its useful life, yet it appears that if a unit with a twenty-year life has been in service ten years, half of its wearing value is gone. In consequence, and especially in the absence of any depreciation fund, which may be considered as an adjunct to the physical property, the straight line basis is herein approved as a method of expressing the requirement of fixing the Reproduction Cost New Less Depreciation. \* \* \*

"In our order No. 499, in re the Pacific Telephone and Telegraph Company (P. U. R. 1919, D 350), the Commission discussed at length, under the heading 'Depreciation and Value,' certain principles which apply as well in this as in other valuation cases. In that opinion two principal theories of depreciation and value were discussed. One method contemplates the use of the average or normal reproduction cost less depreciation as a rate base, with an allowance for depreciation on the straight line method the other method, which produces substantially the same result in the final analysis, contemplates a cost new rate base, with an allowance for depreciation on the sinking fund method.

"The principal objection to the use of the straight line depreciated value as a rate base is that this value may range from the entire cost

new to the salvage value of any unit, depending upon the particular date chosen for the appraisal. And, where a large portion of the existing plant, the units of which have approximately the same useful life, was either originally constructed or rebuilt during a relatively short period, the conditions governing its depreciation approximate those of the single unit above mentioned. The resulting rate would then depend upon the age of the plant when it is manifest that the value of the service rendered, and, we believe the fixed plant costs, should be the same throughout its life. Should the straight line basis be used an average or normal depreciated value should be found; however, such a value, is practically impossible of determination.

"The cost new basis easily determined, with a sinking fund depreciation allowance, was used in the case above mentioned, and, when this allowance is properly safeguarded, as hereinafter provided, we believe it is the simpler and better method. Such a method is consequently used in this case.

"The valuation hereinafter fixed is purely a rate base value for the purpose of fixing just and reasonable rates and should be so considered. (See P. S. C. Or. Order No. 211.)

"From a full and careful consideration of the foregoing findings, in connection with the entire record before us, the Commission now determines that the value for rate making purposes of the utility property of the Douglas County Light & Water Company in Oregon, actually used and useful for the convenience of the public, and including a due allowance for working capital, stores and supplies, and development cost, was on January 1, 1920, as follows: Electric Utility, \$306,969; Water Utility, \$250,767.

#### **500—Rate Practice**

"The present form of electric rates for both lighting and power, takes into consideration only the quantity consumed. Two other closely related factors, the amount of the demand on the utility plant, and number of hours use, which factors are actually reflected in the cost of service, were not considered. This Commission has worked out a form for a single lighting or schedule, which does consider these factors.

"A rate form which will accomplish this result necessarily is more complex than the simple and inadequate rate forms previously in force. It consists of a higher primary rate, which is first applied for the purpose of meeting the fixed costs of the plant necessary for the customers' service. If the customers' use of this plant is exercised for only a short period, he pays for such use only for such period, but at a justifiably higher rate. The consumer who having paid for the fixed charges in the primary rate, which applies to practically two hours' use per day of his largest use, then obtains

the remainder of his energy at the lower secondary rate. Large consumers obtain in both primary and secondary rates, consideration for the decreased cost of supplying power in large quantities.

"The present water power plant capacity of this utility is inadequate, and it has been necessary to supplement this power by operating steam plant with expensive labor and high fuel costs. To prevent the needless superimposition by consumers of power upon the lighting peak, thus causing needless expense, and consequently higher rates, the regular power rate is limited to 20 hours during the low water period, with correspondingly increased rates for 24 hour power use.

"The water rate will be expressed in cubic feet, as the meters read directly in these units, and the consumer will thus be able to more easily check and govern his own consumption of water.

"Contention is made by the company that the previous flat rate charged allocated to the water utility for pumping was inadequate. This electric service to the water utility, however, should be metered as soon as proper equipment can be procured. This particular load being under control of the same management and with large reservoir capacity can probably be placed on the 'off peak' or 'valley' portions of the daily electric load and should therefore be entitled to a lesser rate. Because of this favorable condition we recommend the application of the regular electric schedule hereinafter prescribed with a discount of 20% to provide for the feature above mentioned. Waste of energy resulting from over flow of reservoirs should cease.

"From the foregoing income statement, the estimated true operating income shows that the necessary increase in electric rates will be less than that needed for the water utility, which has been yielding a very low return for at least the period since 1913, and this is especially true at this time. None of the rates requested by the applicant will be granted herein. The lighting rate as proposed by it, especially, is entirely too high, as are the other proposed electric rates in a lesser degree. No change in the municipal lighting rates will occur at this time. The especial attention of the water consumer, is called to the fact that the old metered water rates are less than any that have ever been heretofore prescribed by this Commission, even during the period of low operating costs. Such a condition should demonstrate to the water users of Roseburg, the inadequacy of the low rates previously paid for water service.

"To assess the entire cost of fire protection by only an average charge per hydrant is not as fair as by a lump sum because such cost includes charges for reservoirs, transmission mains and pumping equipment. Therefore the rental on existing hydrants and other facilities will be assessed in a lump sum with a provision for specific rentals on additional hydrants not now on existing mains, to be fixed at a price

sufficiently low to encourage extensions. Where no increase in either length or capacity of mains now installed will be required for additional hydrants a still lower rate is given in order to encourage better fire protection.

"A rate obtained by dividing the total cost of fire protection by the number of hydrants to obtain an average charge per hydrant, is not as desirable as to make a specific total charge which includes the maintenance and depreciation of reservoirs, transmission mains and pumping equipment. For simplicity, the hydrant charge for existing hydrants is generally included therein. A lower charge covering only the additional cost of additional hydrants should be provided at a price sufficiently low to encourage extensions. Where no increase in either length or capacity of mains already installed is required for additional hydrants, a still lower rate should be given to encourage better fire protection. The rates prescribed herein are in accordance with these principles.

"The City of Roseburg has been the recipient of an extremely low hydrant rental and unquestionably out of all proportion to proper returns on the investment, and theoretically, at least, at the expense of the individual water user. This cost is approximately \$3,600 per annum over that of the utility's other business.

"This cost is composed only of a depreciation and return upon the additional investment required for fire hydrant service. No charge for operating expense, or for water used, is included therein. As a choice between charging the individual consumer of water a sufficiently high rate to pay for this fire protection, or of charging the tax payers for the fire protection which they receive, we believe there can be but one equitable course of action open to this Commission. This we have previously followed in the Hillsboro case, *supra*, which decision has been heretofore referred to. However, the effective date of the requirement for municipal hydrant rentals will be set forward to October 1st, in order to obviate embarrassment to the city government.

"It should be well known and understood that the loss in pressure, and consequently the loss in quantity and effectiveness of the water delivered, in fire hose is very high, and if a block length of hose can be substituted by the installation of an additional hydrant such substitution will undoubtedly be found to have been economical in case of fire.

"The rate hereinafter fixed is based on adequate service for fire protection and the utility will be expected to use all reasonable efforts to keep its reservoirs full. Reasonable service demands that at no time should the reserve water in each group be less than 45% of its maximum. Indicators readily visible from a distance showing the actual amount of water in each reservoir shall be provided by the utility.



"This Commission has found that the use of flat rates and combined light and power rates generally leads to discrimination. In consequence, all flat rates, except those hereinafter prescribed, will be cancelled by this order."

### MONTANA

#### 300—Investment and Return

Helena Light & Railway Company, Application for Authority to Increase Its Gas and Street Railway Rates. Decision of the Montana Public Service Commission, Granting an Increase in Gas and Street Railway Rates and a Decrease in Electric Rates. May 10, 1920. (Continued from 17 Rate Research 291-297.)

#### 311.2—Reproduction Cost New

"Further, if parts of an undertaking deteriorate and decrease in value, the whole undertaking will not have a value equal to its original cost unless all of the parts are new. Replacements of parts—that is, cars, track, boilers, engines, etc.—as they need replacement will not keep the property as valuable as when new unless the parts are all replaced at once, which is practically impossible. The only way to determine what is the value of the whole undertaking is to examine its various constituent parts and determine their value, having regard for all of the factors.' Re Metropolitan Street Railway Reorganization, 3 PSC 1st Dist., N. Y., 113, 147.

"It is also argued by the applicants that a plant which is in first-class operating condition, although its cars may be somewhat old, its rails worn and machinery aged, is worth as much from an operating point of view as a plant which is practically new throughout. They doubtless mean that such a plant can earn as much as one which is practically new and represents in value 100 per cent of its cost of reproduction.

"It may be that from a gross earnings point of view a system whose present value is equal to 75 or 80 per cent of its cost to reproduce new is nearly equivalent to a system whose present value is 100 per cent of its cost to reproduce new; but there are several considerations which prevent the complete acceptance of this theory when applied to net earnings. The cost of maintenance and repairs is less when a road is entirely new than when it is 75 per cent new. Plant and equipment become less efficient with age. But, most important of all, the period is shortened within which provisions must be made out of earnings for renewals, replacements and reconstruction.' Re Third Ave. R. R. Reorganization Plan, 2 PSC 1st Dist. N. Y., July 29, 1910. And see: King's County Lighting Company vs. Wilcox, 156 App. Div. N. Y. 603; 2 PSC 1st Dist. N. Y., 659, 714; Re Berlin Electric Light Co., 3 N. H. PSC R. 174; Hays on Public Utilities, pp. 182-206; Whitten Pub. Ser. Corporations, Ch. XVIII, pp. 1118-1169, Supp. 1914.

"Again, the company argues, with reference to the street railway and gas utilities that it is unfair to deduct for depreciation which the company has been unable to make good by renewals and replacements because its net earnings in past years have not been sufficient to enable it to do so. This argument is unsound for two reasons: "First: An examination of the evidence and reports made to this Commission by the company will show conclusively that, on a fair valuation, this company has received in past years sufficient earnings from the combined utilities to have permitted it to set aside annually a sufficient depreciation reserve, pay all operating expenses and taxes, and a fair return on the value of the utilities, but that instead of doing so the company has preferred to distribute to its stockholders, on excessive bond and stock issues, as earnings, the amounts which should have been set aside as a reserve for depreciation; in effect, distributed as earnings a part of its capital, so that it cannot now in justice be allowed the full value of the utilities as a basis for rates. "Second: Assuming the company has failed in past years to earn sufficient to make good depreciation by renewals and replacements, the fault is its own as it should have increased its rates so that its earnings would have been sufficient for such purpose. In the case of Knoxville vs. Knoxville Water Co., 212 U. S. 1, 53, L. ed. 371, it was said:

"If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over issues of securities, or of omission to exact proper prices for its output the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors of management which have been committed in the past."

"Moreover, it must be remembered that we are proceeding in the main on the reproduction-cost-new theory. The value of the tangible property upon which the company is entitled to a rate which will procure a fair return is the present value, i. e., at the time of the appraisement for rate-making purposes. In the absence of accurate evidence as to actual value, the cost-of-reproduction-new takes the place thereof. But the property we are valuing is not new and in order that cost-of-reproduction-new may represent the actual condition—the amount presently invested—there must be a deduction therefrom. This deduction represents the amount required to replace apparatus still in use, but in process of wearing out, at the end of useful service. See: Kings County Lighting Case, *supra*.

"Finally, we are satisfied that our determination to deduct depreciation under the particular facts here exhibited is correct since our decision submits itself to the rule enunciated and applied by the United States Supreme Court in two cases involving like states of

fact—Knoxville vs. Knoxville Water Co., 212 U. S. 1, and Minnesota Rate Cases, 230 U. S. 352. \* \* \*

"It remains now to apply a method of measuring such depreciation and thereby establish the sum to be deducted. To apply either method offered by the engineers, impartially and exclusively, would, it seems to us, substitute pure conjecture for rational estimate. In *City of Helena vs. The Helena Light and Railway Company*, 6 Mont. R. R. & P. S. C. Reports, in objecting to the straight-line method as a sole arbiter we said:

"Whether or not the valuation thus obtained is subject to depreciation, and, if so, to what extent, is a matter of expert opinion depending upon the amount expended for maintenance, renewals and permanent improvement work; the period during which such amounts were expended, and in general, the 'state of repair' of the property. It will be obvious that there can be no fixed percentage of depreciation applicable to a utility that had been 'kept up' from year to year by constant effort, and the purchase of improved devices, as compared with one that had been allowed to deteriorate through neglect; hence the principle of an arbitrarily established measure of depreciation is untenable."

"We see no reason now for departing from the views there expressed. On the other hand the 'operating efficiency' method applied by Engineer Gillespie seems to us to exclude an essential basis of all rate-making, i. e., the present value of the property devoted to the public use. 'Operating efficiency' may or may not have relation to present value, and while present value is more often than not extremely difficult of determination it appeals to us as grounded on fact bases where 'operating efficiency' must always be an 'estimate of estimates.' To us it seems that while both theories may be properly considered, neither should be given preference over the other or ever allowed to control, but that both theories, and the age of the whole property, its condition, the service rendered, its state of efficiency, and whether the earnings have been used to make good depreciation or to pay dividends to the stockholders, should all be considered, and after consideration of all of these elements a flat percentage should be deducted for depreciation. Considering all of these elements in connection with these three utilities, we believe that a fair percentage to be deducted is as follows: Street Railway, twenty per cent of the value of the property subject to depreciation; Gas, twenty per cent of the value of the property subject to depreciation; Electric, fifteen per cent of the value of the property subject to depreciation.

"We have taken 20 per cent for the street railway for several reasons. Far the greater part of its track and roadway and distributing system is very old, and there has been little effort to keep it up in good

shape, the company being apparently satisfied to keep it in such condition only as would permit fairly safe operation, with little consideration for the care or comfort of its patrons. The rolling stock is not only all very old, but was practically all purchased second hand. By reason of the age of the property, and the failure to keep and maintain it in proper condition, the cost and expense of operation is far greater than it would be if the company had, in past years expended sufficient funds to maintain its property in even fair condition.

"We have taken 20 per cent for the gas utility for the following reasons: Here, as with the street railway, the property is old, and there has been apparently little effort to keep it in good condition. This has resulted in an excessive loss of gas. The reports filed with this Commission for the years 1914 to 1918, inclusive, show an increased loss each year, that for the year 1914 being 14.35 per cent, which increased each year until 1919, when it was 20.05 per cent. That this is an excessive loss and must be due to the poor condition of the old mains seems apparent when we compare such losses with those of the Great Falls and Billings gas plants for the same years. \* \* \*

"While the gas utility shows some small annual increase in the volume of cubic feet sold, and a small annual increase in consumers, particularly during the coal shortage seasons, comparatively it is at a standstill. It is almost superfluous to say that the evident inertia of the gas service, its deteriorated plant, and relatively failing patronage result immediately from the fact that it has no competition. Its natural competitor, the electric utility, being owned by the same company, favored by the management and enjoying certain popular advantages, has snuffed out the spark of incentive to increased business and improved service. The company is indifferent to better gas service because its failure in this department results in gain to the electric department, whereas an independent gas entrepreneur would strive to occupy the electric field. With the recent abnormal increase in the cost of coal and wood fuel, gas fuel service could be made very popular if pains were taken to develop it and render the service efficient.

"We have taken fifteen per cent for the electric utility for the reason that this utility seems to be in much better condition than either of the others. Its property seems to have been kept up in better shape and is now in a better state of efficiency. This is borne out by the estimates of depreciation by both engineers, their estimates of the amount of depreciation, under the two theories adopted and followed being much lower than for either of the other two utilities.

"In arriving at a depreciable base we have excluded all overheads, land, and the items omissions and contingencies and engineering and

supervision, preferring to consider only physical depreciation in its strict sense. In arriving at our average value we included the average of the physical values as ascertained by the two engineers. The Commission's engineer fixed the physical value of the railway at \$595,787, while the company's engineer fixed it at \$580,669, the average of these two values being \$588,278. This amount, however, includes certain land values which are not subject to depreciation and which must be deducted from the sum \$588,278. The land values amount to \$3,750, being \$3,000, fixed by both engineers as the value of the carhouse site, and \$750 fixed by the Commission's engineer on the right-of-way. Deducting this amount from the average physical value, we have \$584,528 as the physical value of the property of the railway subject to depreciation, and 20 per cent of this amount gives us \$116,905 as the depreciation to be deducted.

"In arriving at the average value of the gas utility we also included the physical values as ascertained by the two engineers, viz., \$300,506, by the Commission's engineer, and \$293,077, by the Company's engineer, or an average of \$296,792. This value, however, includes \$3,285, fixed by both engineers as the value of the land, and must be deducted from the \$296,792. This leaves \$293,507 as the physical value of the gas property subject to depreciation, and 20 per cent of this amount gives us \$58,701 as the depreciation to be deducted.

"In arriving at the average value of the electric utility we also included the physical values ascertained by the two engineers, after being readjusted, viz., \$257,016 by the Commission's engineer and \$267,690 by the Company's engineer, or an average of \$262,353. This sum includes, however, the value of the land fixed by both engineers at \$5,000, which being deducted leaves \$257,353 as the physical value of the property subject to depreciation, and 15 per cent of this amount gives us \$38,602 as the depreciation to be deducted."

*(To be continued in next week's issue of Rate Research)*

## WISCONSIN

### 620—Factors Affecting Rates

Racine Gas Works of the Wisconsin Gas and Electric Company, In the Matter of the Report of the Board of Conciliation of the State of Wisconsin with Respect to Fair, Equitable and Just Wages. Decision of the Wisconsin Railroad Commission, Adjusting Rates to Meet Increased Cost of Labor. June 29, 1920.

The Board of Conciliation, acting under Chapter 530 of the Laws of 1919, has reported to this Commission its determination and findings in regard to the employees of the Racine Gas Works of the Wisconsin Gas and Electric Company granting general increases in wages. Fol-

lowing the receipt of this report the Commission set a hearing for June 11, 1920.

The Commission says:

"The determination of the revenue requirements of the Lake Shore gas division of the Wisconsin Gas and Electric Company is complicated by an extreme and abnormal coal situation which leaves us uncertain as to what the cost of gas coal will be over any considerable period and it is impossible to determine for any material period the revenue requirements of the company. We do not believe that it was the intent of Chapter 530 of the Laws of 1919 that the Commission must necessarily adjust rates so that for each month or other short period the company would be earning a fair return upon the capital employed. Adjustment of rates, whether upward or downward, cannot be so closely adapted to the revenue requirements that the return in each month under a system of regulation will be a fair return and no more than a fair return. As already stated, it is impossible to forecast the revenue requirements of the company accurately, but this order will provide for such rate increase as the Commission is satisfied will be required.

"In passing upon the amount of the increase necessary we must not overlook the fact that the Wisconsin Gas and Electric Company in its Lake Shore gas division has not recently attained anything like the average standard of efficiency reached by other gas plants in the state. We know of no conclusive reason why the Racine gas plant should not attain a standard of production comparable with the average of other plants.

"Not only is the future of the coal market uncertain but the results to be obtained from the sale of residuals are also uncertain. The market price of coke is largely dependent upon the price of anthracite coal and the future price of this is something which we cannot even approximate.

"We have given consideration to all the factors and all the evidence which we have before us. Considering all these conditions it is our conclusion that at this time the Lake Shore division of the Wisconsin Gas and Electric Company should be authorized to increase its rates for gas service in the amount of 25 cents per thousand cubic feet and this order will so provide."

## REFERENCES

### INVESTMENT AND RETURN

#### 360—Depreciation

Basis of Estimating Allowance for Depreciation, by William G. Raymond. Engineering News-Record, July 22, 1920. p. 178, 1¼ pages.

As valuations are usually made in rate cases the reproduction cost of the property at the time of valuation is estimated, the amount of accrued deprecia-

tion is estimated with the reproduction cost as a base, and as an item of the operating expense the annual depreciation allowance is estimated on the same base. The purpose of this paper is to inquire whether or not this is proper practice.

In discussing the proper method of accounting in respect to a valuation for purposes of ratemaking, the writer says:

"It would seem to be reasonable to conclude that when a public utility property is created, it is not the physical property items that the public should undertake to maintain, but rather the investment in that property. And if the owner receives a fair return rate on the money that he invests in the various items of a public service property, while these items are in existence, and receives back what he paid for them when they go out of existence, and further receives a fair return on the cost of the items that replace the original items, whether this be less or more than the cost of the original items, is he not receiving his just due, and is not the public paying its fair charge?

"If this conclusion is sound, then the annual depreciation allowance that is included in operating expense should be based upon the cost of the depreciating item, and not on the cost of the item that is to replace the depreciating item. As a rule this cost of the replacing item cannot be known in advance of its purchase, so that it is impossible, even if it would be just, to base the depreciation allowance for a given item in use on the cost of the item that is to replace it.

"And again, if the conclusion is correct, then it is equally improper to base the depreciation allowance on the cost of reproduction of the property as of the time of a valuation. Rather should the depreciation allowance be based upon the estimated or known original cost to date, and this is true regardless of whether original cost to date or reproduction cost as of the date of valuation, or any other estimate is used for determining the value of the property at a given date. \* \* \*

"It sometimes occurs that an item of property is not replaced at all when it wears out. Some new method of doing what this item has done has been discovered. The item has become obsolete. The cost of replacing it in kind is zero because it is not replaced. Shall the depreciation allowance be figured on this basis? Manifestly that would be absurd. The owner would have lost his investment.

"Does it not seem clear, therefore, from the statements made, that always the depreciation allowance—when any depreciation allowance is set up in operating expense—should be based on the original cost of the depreciating items rather than on their reproduction cost as of any time or on any estimate that may be made of their future replacement cost?"

## COURT DECISION REFERENCES

### 228—Franchises

Greenville Telephone Co. v. City of Greenville. Decision of the Court of Civil Appeals of Texas. March 27, 1920. Rehearing Denied May 8, 1920. 221 Southwestern 995.

This is an injunction suit brought by appelle to enjoin the appellant from violating the provisions of its franchise granted by said city, in that appellant was charging and collecting from its subscribers certain service charges, which

are prohibited by the terms of said franchise, and praying for a temporary restraining order, prohibiting appellant from making said charges, and requiring it to install and move the telephone of its subscribers without charge.

The Court says:

"We do not concur in the contention of appellant that the 'language of the ordinance must be strictly construed against the appellee,' but agree with the authorities which hold to the principle as follows:

"'Acts of incorporation and other statutes granting special privileges are to be construed strictly, and whatever is not given in unequivocal terms is withheld.' *Moran v. Miami County*, 2 Black, 722, 17 L. Ed. 342. 'Grants of franchises by the state are to be so strictly construed as to operate as a surrender of sovereignty no further than is expressly declared by the terms of the grant; the grantee takes nothing in that respect by inference.' *Syracuse Water Co. v. City of Syracuse*, 116 N. Y. 167, 22 N. E. 381, 5 L. R. A. 546.

"When the government took over the system it was the duty of the subscribers to yield to its rules and regulations, but when it surrendered its control and the plant went back in the hands of the telephone company, the only protection the public had was to rely on the franchise which had been theretofore granted, and on it to look for its rights. The right to make charges for any services has to be regulated by the franchise, and, unless such a right is specified in the franchise, then the company cannot do anything contrary thereto. In other words, the telephone company has no right to go into a city and use the streets without it first obtains a franchise, and that it is granted a charter for its manner of doing business, its rate of charges when specified, etc., and it cannot roam off into the domain of speculation wherever fancy may lead it. *Galveston Wharf Co. v. Railway Co.*, 81 Tex. 494, 17 S. W. 57; *City of Memphis v. Browder*, 174 S. W. 982; *Waterworks Co. v. City of Ennis*, 105 Tex. 63, 144 S. W. 930; *Muncie Natural Gas Co. v. City of Muncie*, 160 Ind. 97, 66 N. E. 436, 60 L. R. A. 822; *Syracuse Water Co. v. City of Syracuse* 116 N. Y. 167, 22 N. E. 381; 5 L. R. A. 546; *Slidell v. Grandjean*, 111 U. S. 437, 4 Sup. Ct. 475, 28 L. Ed. 321; *Cleburne Water, etc., Co. v. City of Cleburne*, 13 Tex. Civ. App. 141, 35 S. W. 733. \* \* \*

"The franchise was granted to the telephone company November 17, 1916. It was accepted by said company and it did business thereunder and in accordance therewith until the United States government took charge thereof and operated it at an increased rate, contrary to those expressed in the franchise, until the plant was surrendered in December, 1919, when the company took charge, and has since been operating it in opposition to the franchise.

"It was shown by its general manager that it could not exist if it had to operate at less than the rates charged by the government, and asked that this court interpose its equitable powers and prevent its bankruptcy by dissolving this injunction. The franchise granted by the city of Greenville is the only contract ever entered into between the parties, and we do not think we should make another contract under the circumstances, but we will remit them to the remedy provided in section 4 of said franchise, which the company has never attempted to evoke. *Ball v. Texarkana W. Co.*, 127 S. W. 1069; *Smith v. Birmingham W. W. Co.*, 104 Ala. 315, 16 South 123; *City of Madison v. Madison Gas & Electric Co.*, 129 Wis. 249, 108 N. W. 65, 8 L. R. A. (N. S.) 529, 116 Am. St. Rep. 944, 9 Ann. Cas. 819; *Attorney General v. Railway Co.*, 35 Wis. 425; *Cleburne W., etc. Co. v. City of Cleburne*, 13 Tex. Civ. App. 141, 35 S. W. 733.

"Under the circumstances of this case we think the action of the trial court in granting the writ of injunction was proper, and it is affirmed."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### VIRGINIA

#### 300—Investment and Return

Chesapeake and Potomac Telephone Company, Application For a General Revision of Rates. Decision of the Virginia Corporation Commission, Fixing Rates. July 23, 1920.

On July 25, 1919, the Chesapeake and Potomac Telephone Company of Virginia filed with the Commission its petition asking permission to file tariffs putting into effect certain increased rates.

Realizing that the application for a general increase in rates would necessarily consume considerable time, because of the many issues involved, the company asked that the Postmaster-General rates should be permitted to remain in effect from and after December 1, 1919, and until the Commission should decide the main case.

The first protest came from the City of Richmond, which claimed that by virtue of a franchise granted by it to the company in which reference was made to the rates to be charged, the Company was obliged under that provision of the Act of Congress referring to rates made by contract, to return at once to the pre-war schedule. Argument was made before the Commission on September 16, 1919, on the subject of jurisdiction, following which briefs were filed by the City and by the company. On October 28, the Commission rendered its decision, with an opinion by Chairman Rhea, holding that the City was without jurisdiction over the telephone rates, and an order was entered by the Commission taking jurisdiction and continuing in effect in the City the Postmaster-General rates pending the determination of the main case. From this decision the City has appealed to the Supreme Court of Appeals.

The application for general advance in rates was set down for hearing before the Commission in its court-room on November 19, 1919. At that time objection was made to the jurisdiction of the Commission, on account of local franchise provisions, by the cities of Lynchburg, Roanoke, Winchester, Radford and Suffolk, and by the towns of Christiansburg, Pulaski and Dublin. Many communities were repre-

sented with reference to the reasonableness of the proposed rates, but in the main this matter was approached by those present in an inquiring spirit.

The Commission says:

"In the rapid development of public utilities, born of the desire of the people to avail themselves of the conveniences resulting from invention and discovery, too little attention was paid to provision for the future. Such enterprises as local telephone companies were formed, often backed by a large amount of commendable public, and rates were fixed so as to attract the public to new and untried service, with little regard to the actual cost of doing business and, unfortunately, with still less regard to the inevitable depreciation of the property. All the States are today strewn with public utilities which have deteriorated greatly in value to the people because they are worn out, no sufficient amount having been charged from the beginning to maintain them in proper condition and to provide a fund with which to rebuild those portions whose deterioration is gradual and cumulative.

"The owners of many such properties, as time went on and as the above facts became more and more evident, became discouraged with their investments and were glad to sell them to the Bell interests. That system, with its extensive business, extending all over the United States, was obliged to systematize its affairs, and reduce them to a more scientific basis. It found itself with properties in differing degrees of decay, and with a rate structure in the main inadequate to provide a depreciation reserve, and varying greatly in different localities without reason or cause except the mistakes made in the beginning.

"It is patent, therefore, that even if there had been no war, the Chesapeake and Potomac Telephone Company would have been compelled to seek a general advance in rates, so that it might be properly prepared to continue to serve the public with adequate facilities in years to come. In fact, the company was preparing its case, with a valuation based upon a field inventory of 1914 with necessary additions, for the purpose of asking for higher rates, when the wire lines were taken over by the Federal Government. War emergencies caused the postponement of all such proceedings.

"Considerable additions were made to the Company's revenues by reason of the advances authorized by the Postmaster-General, and in normal times these increases might have proven adequate or perhaps excessive. But the Company had to suffer, along with everybody else, by the greatly increased cost of labor and material as the result of war conditions, and the investigation made by the Commission of the Company's affairs indicates that its revenues are now insufficient to permit it to exist and properly serve the public."

## 224.5—Rates Fixed by Contract

"An additional burden was placed upon this Company, together with all others whose municipal franchises fixed the maximum rates for service. These franchise requirements were brought into being mainly in the old hit-and-miss days, when it was regarded as good practice to prescribe the return for giving service as compensation in part for the use of the highways of cities and towns. We think no one could contend now, in view of the lessons of the past few years, that local governing bodies should fix irrevocable rates by contract, without regard to future conditions. This practice has brought most of the street railway systems of the country into receiverships, and many other public utilities have followed suit, until it is now a question whether a large portion of them will for years to come be in position to serve the public efficiently, because of broken down equipment.

"A hard and fast rate fixed in a local franchise ten years ago will bankrupt any utility today; a hard and fast rate fixed in a local franchise today at present cost prices will in all probability be an intolerable burden on the unfortunate citizens ten years hence. The method of fixing rates in franchises may be regarded as obsolete, and throughout the Union it is recognized that such rates should be flexible and under the control of a central regulative body, constituted for that purpose and equipped for that purpose.

"An instance in point, showing that the above argument is peculiarly applicable to an instance like the case at bar, where a single utility operates in many communities, is that of the City of Richmond. It is quite evident that for some years before the World War, operating under franchise rates by which it then believed it was bound, the Company furnished service to the people of Richmond at less than cost, and thus the people of other cities and towns, and of the country districts in Virginia were obliged to pay to help maintain telephone service in Richmond. When certain territory contingencies to the city was annexed some years ago, the telephone rates of patrons taken in were greatly reduced. Can there be any reasoning by which a mere act of annexation could make a telephone, in the same spot and serving exactly the same clientele, worth 40 per cent less than before?

"In its calculations the Commission has assumed that the rates allowed will be applicable as set forth in the schedules, regardless of local franchise provisions. If in some localities these rates cannot be realized, the Company must lose, and its only recourse is to secure, if it can, amendments to franchises permitting it to put into effect the charges deemed by the Commission to be fair for the several municipalities. The Commission will not penalize the remainder of the patrons to make up to the Company its losses incurred by reasons of its mistakes in making irrevocable contracts.

"From our conclusions below it will be observed that inequality may result in cases where communities do not amend their local franchises so as to meet the Commission's decision as to a fair and reasonable rate, because the company's patrons living and doing business just outside the city or town limits will be paying a higher rate than those inside the municipality, whose rates are limited by franchise. The Commission cannot help this; it is a condition resulting from the application of the law.

"While the views above set forth are, we believe, in accord with sound public policy and modern economic theory, we are not unconscious of the fact that the questions presented for our determination are to be decided not upon the law as it should be but upon the law as it is, and that in passing upon the franchise rights and obligations of the Telephone Company and the several municipalities concerned, we are necessarily to be governed by the Constitution and statutory law applicable to the questions involved, as well as the judicial decisions applicable thereto. The general considerations discussed are, however, pertinent in so far as the written law may fail to fully cover a given state of facts, or may be susceptible of different constructions, and in all such cases it is and will be the policy of the Commission to assert its regulatory jurisdiction, rather than, by the invocation of legal technicalities to seek the maintenance of franchise obligations.

"The Chesapeake and Potomac Telephone Company of Virginia operates in the cities and towns of Lynchburg, Roanoke, Winchester, Suffolk, Radford, Christiansburg, Pulaski and Dublin under franchises granted by the respective municipalities, and the first inquiry, equally applicable to all of the cases, is this:

"Where a telephone company has sought and obtained from a municipality a franchise by which the reciprocal rights and obligations of the parties are fixed by contract, has this Commission any jurisdiction to regulate rates and service in such municipality?

"Under the terms of Section 153, Constitution of Virginia, a telephone company is defined as a transmission company, and Section 156 (b) of the Constitution, as interpreted and construed by our court of last resort, confides to this Commission plenary power to regulate and supervise the rates and service of this class of corporations, save in so far as such matters may have become irrevocably fixed by a franchise contract made in strict accordance with the provisions of Sections 1033e and 1033f of Pollard's Code 1904 (Sections 3016, 3018-24, Code 1919). *Va. Western Power Co. vs. Clifton Forge* 18 Va. App. 381.

"There is thus carved out from the general plenary jurisdiction of this Commission, a class of cases to which the powers of the Com-

mission do not extend; a class of cases which must be regarded as an exception, or rather as a reservation, withheld by the Legislature under sanction of the organic law, from the regulatory supervision of this Commission, which otherwise would be perfect and complete. That exception is operative only when the franchise contract is completed in strict conformity with the statutory requirements and only to the extent that the contract itself is finally determinative of the rights and obligations of the parties. If, notwithstanding the contract, there shall be matters of service and rates which are not finally and completely concluded thereby, the general jurisdiction of the Commission attaches. The Commission's powers, in respect to the regulation of rates and services of transmission companies, under section 156 (b) of the Constitution, are all-inclusive, all-pervasive, except as and to the extent that they are prevented from operating by a franchise agreement concluded in accordance with the statutory provisions mentioned.

"It follows that the mere existence of a franchise agreement does not settle the question of the Commission's jurisdiction. It must first be determined whether the franchise agreement has been executed in conformity with statutory requirements, and, secondly, whether or not the rate, regulation or service in question, has been definitely fixed and determined by the terms of the contract in question; if not, in either case, this Commission has jurisdiction of the issue.

"In order, therefore, to determine the existence and extent of the Commission's jurisdiction, it becomes necessary to examine the various franchises involved and in the interest of brevity, it is fortunately possible to group for consideration the franchises granted by the cities and towns of Lynchburg, Roanoke, Christiansburg, Pulaski and Dublin, which, although not in all respects identical, present the same questions for decision."

*(To be continued in next week's issue of Rate Research)*

## WISCONSIN

### 500—Rate Practice

Iola Light, Power and Manufacturing Company, Application for Authority to Increase Rates. Decision of the Wisconsin Railroad Commission, Granting the Application. July 29, 1920.

The Iola Light, Power and Manufacturing Company filed an application for authority to increase its rates for electric service.

An appraisal of the property and plant of the Company was made as of May 24, 1920. The reproduction cost as shown by the appraisal amounted to \$21,105, while the reproduction cost less depreciation as of that date amounted to \$15,500.

The Commission says:

"If we consider the total joint business of the company—that is, the mill, electric and merchandise departments, it is noted that the revenues for the year ended June 30, 1920, amounted to \$14,845.71 while the expenses, including taxes and depreciation, but excluding interest charges, amounted to \$15,513.70. While non-operating revenues amounted to \$6,861, expenses charged to non-operating business approximated \$5,728. The net earnings from non-utility operation, however, were insufficient to offset the losses from electric generation.

"Our investigation indicates that it is highly probable that day current would not be provided were it not for the fact that the sawmill requires steam during the day. The load on the electric generator and the steam engine is very small during this period, but the sawmill takes practically all of the steam generated. At the time of our investigation the sawing season was over and it was noted that the very small load which was being carried during the day was barely sufficient to warrant day operation.

#### 612—Power

"From the record and from Exhibit 1 it is noted that the utility is supplying service to 10 power consumers with an aggregate of about 69 h. p. Examination of these data and consumer data obtained indicates that all but three consumers are seasonal users of the applicant's service. For this reason the revenues derived from the power business fluctuate materially during the year.

"The law permits classifications and allows a difference in rates where there is a difference in the cost of service, and the rates are adjusted thereto. Utilities supplying short term or temporary service, covering three to six months, are justified in securing for that service sufficient revenue to cover those continuous fixed charges which accrue to the plant because of the facilities devoted to the power customer and which the utility maintains the year round. These charges go on whether a greater or lesser amount of product is being consumed, and are required as much for premises which use energy only during some part of each year, and must be served when occupied, as for those premises which are open and supplied throughout the year.

"The short term consumer therefore receives service of a special character and as a consequence his rate should be special and adapted to such service in order not to raise the presumption of discrimination. In this case the company is obliged to maintain a plant in order to carry, during a few months of the year, the power load of the greater number of its power customers. This temporary service is beneficial to the customer because it enables him to shift



the most expensive part of his load upon the company and the company's power business is not as desirable as it would be if all customers were year around users. Rates have been established in a great many instances covering short term meter service such as is being supplied by the Iola Light, Power and Manufacturing Company to a large number of its power consumers.

"From the data in the files we have estimated the probable revenue which the utility will receive under the increase in rates proposed. While it is apparent that several of the power consumers will have their bills increased over 25%, the average increase for all power customers, it is believed, will not exceed this figure. It is evident from a comparison of the proposed power rates with the present rates that many of the consumers' bills would not be materially increased provided the consumption of energy was such that the demand charge could be apportioned over a larger number of units. As many of the consumers are short hour users, however, the proposed change will affect them considerably. Computations indicate that the proposed increase in the minimum bill for commercial lighting and an increase in commercial lighting flat rates will provide but little additional revenue for the utility. In fact, the increased revenue obtained from this source and from the power business, it appears, will barely cover operating expenses to say nothing of a return on the company's investment. We are of the opinion, therefore, that an increase in rates should be made in this case. We believe, however, that where power consumers do not desire to sign the company's yearly contract that a short term power rate might be equitably established."

#### 720—Rate Schedules

The following increased rate for power service was prescribed by the Commission to be made effective August 1, 1920:

#### POWER

##### Rate

##### Demand Charge

\$1.00 per month for the first horsepower or fraction thereof and  
\$.75 per month for each additional horsepower of connected load,  
plus an

##### Energy Charge of

10 cents gross or 9 cents net per kilowatt hour for the first 100  
kilowatt hours consumed per month  
7 cents gross or 6 cents net per kilowatt hour for the next 400  
kilowatt hours consumed per month  
5 cents gross or 4 cents net per kilowatt hour for excess consumption

The minimum charge for Commercial Lighting—Metered Service—was increased from \$1.25 to \$1.50 per month.

The flat rate for Commercial Lighting—Unmetered Service—was increased from 50 cents per month per 60 watt lamp to \$1.00 per month per 50 watt lamp.

### **CALIFORNIA**

#### **620—Factors Affecting Rates**

Southern Counties Gas Company of California, Application for Authority to Increase Its Gas Rates in the City of Santa Barbara. Decision of the California Railroad Commission, Granting an Increase. April 26, 1920.

In this application the Southern Counties Gas Company asks permission to increase its rates for artificial gas served to its consumers in the city of Santa Barbara and adjacent unincorporated territory. It points out that the existing city rate of \$1.00 per thousand cubic feet is too low, and that during the nine months of March 1 to December 1, 1919, the company suffered a net loss of \$2,469.72 without any allowance for interest or depreciation.

Applicant has in the past had in effect a different schedule of rates in the territory outside the city of Santa Barbara as compared with the rate in the city, the rate formerly in effect in the city being \$1.00 per thousand cubic feet with a minimum of \$1.00, and that applicable outside the City of Santa Barbara being \$1.25 per thousand for the first 10,000 cubic feet, \$1.15 per thousand for the next 20,000 cubic feet, and \$1.10 for all over 30,000 cubic feet. The main portion of the unincorporated territory served by applicant is in a more or less scattered district, in which the cost of service is considerably greater than within the city limits of Santa Barbara.

Applicant has urged that the same rate be charged in the entire district.

The Commission says:

"It does not appear that this request should be granted as it will put an additional burden upon the city communities to stand the additional cost of serving the more scattered territory. The rates herein proposed will maintain the general differential previously charged and are fixed with a view to returning to applicant a return, in addition to operating expenses and depreciation, of approximately 8 per cent upon the sum heretofore found as a correct rate base."

### **MONTANA**

#### **300—Investment and Return**

Helena Light & Railway Company, Application for Authority to Increase Its Gas and Street Railway Rates. Decision of the Montana Public Service Commission, Granting an Increase in Gas and Street Railway Rates and a Decrease in Electric Rates. May 10, 1920. (Continued from 17 Rate Research 291-297, 313-317.)

## 340—Rate of Return

"It must here be noted that on the hearing the company contended that it was entitled to a return of eight per cent per annum on the combined properties, but since that time the eight per cent contention has apparently been abandoned, for counsel now strenuously insist that the rate of return should be at least ten per cent per annum with an additional amount which should be provided to cover surplus and contingencies. It is evident to us that since the hearing the company has gone into its finances very thoroughly and has seen that it is now and has since this Commission assumed jurisdiction over it (with the exception of the year 1918) been in receipt of a return of at least eight per cent on the fair value of its combined properties, due to the ability of the electric utility to rescue the street railway and gas utilities. Hence the necessity for a change of front, to obtain a rate increase and to prevent reduction of the present electric rates. Moreover, in order to forestall a reduction in electric rates, and to show that the electric utility is not earning above the 10 per cent rate of return sought, counsel for the company increase the electric utility rate base proposed by their engineer Gillespie from \$428,025 to \$436,980, by adding additional amounts to his overhead allowances, leave the operating revenues for 1918 at the same figure, \$186,239.56, and increase operating expenses \$19,212.04, chiefly by items for "Utilization," and "General and Miscellaneous." Notwithstanding this process, and the fact that the lean year 1918 was selected for example, counsel still find a return of 12.9 per cent for the electric utility, which they propose to reduce to 10.9 per cent by charging against it street railway taxes for the year 1918 amounting to \$8,679.94. Comment is superfluous.

"What remedy can we apply to correct the condition obtaining with reference to these three utilities? The answer, "increase the railway and gas rates," will not alone suffice, for there is a point where rates become prohibitive. We propose to apply the following correctives:

"First: Application of a more economical management by refusing to allow the gross operating expenses now claimed necessary, exorbitant and unreasonable, specifically including the fee of  $7\frac{1}{2}$  per cent of the net earnings paid the New York management of J. G. White and Company, exorbitant New York directors' fees and excessive expenses of officials, which will have the effect of reducing future operating expenses approximately \$10,000, and an additional reduction of approximately \$5,000 on account of special expenses incurred in 1919 in connection with valuation of the property, special attorney's fees, and audit of book accounts and engineer's expenses. \* \* \*

"Second: Elimination of the practice of charging the cost of

renewals and replacements as an operating expense and adding such cost to the capital investment. Hereafter each utility operated by The Helena Light and Railway Company must carry a separate and distinct depreciation reserve in strict compliance with the Uniform Classification of Accounts prescribed by this Commission for each utility. (Street Railway, p. 26 Street Railway Classification; Electric, pp. 21 and 22, Electric Utilities Classification; Gas, pp. 20 and 21, Gas Utilities Classification). An appropriate order will be entered.

"Third: Increase of the rates of the street railway and gas utilities to a point where those utilities are earning, respectively, at least legitimate operating expenses, taxes and depreciation reserves; and if possible a portion of the return on the investment. Reduction of the rates of the electric utility to a point where that utility is making no more than a fair return after meeting legitimate expenses, taxes and depreciation on the separate property of the electric utility, plus such requirements of a fair return to the street railway and gas utilities as their deficits in fair return show necessary. What we propose is not a rate increase in the aggregate, but a rate readjustment to the end that each public service, separately considered, will bear its own burden and stand on its own feet without leaning on any other service, so far as that is possible in this case without depriving the community of essential service or investors of their constitutional right to a fair return on their property devoted to public use. This means, of course, that we are here considering the investment as a whole—measuring the reasonableness of our rates by their effect on our base values combined. Heretofore this Commission has adhered to the principle that where more than one utility is operated in the same community by a single company, each utility must stand alone, i. e., that in fixing the price of its electric energy, for example, the company is not entitled to recoup its losses, if any, in that product upon sales of gas. We still adhere to that principle as fundamentally sound. But in the instant proceeding its complete application here would result in disaster. It is admitted by all parties in interest, but equally a fact without such concession, that to raise the rates of the street railway and gas utilities to a level that would place those utilities on a basis whereby they would earn, respectively, operating expenses, fixed charges and a fair return on the investment, would be prohibitive of anything like a sufficient return because the service patronage necessarily resulting from the excessive rate essential to maintain each utility along would leave the company, and its street railway and gas utilities in a situation worse than before. This result would mean nothing more or less than that the street railway utility and possibly the gas utility must cease to function, must cease to serve the Helena community, for we cannot compel them to operate at a loss. (See City of Helena Ordinance No. 491). A minimum has been marked to our authority. A line has been drawn beneath which confiscation sets in. Confis-

cation or deprivation of property, contrary to the constitutional right, begins when the revenue derived from rates prescribed is less than legitimate and necessary operating expenditures. And a rate theoretically sufficient for each utility alone would have the precise effect of producing revenues below operating requirements at least in so far as the street railway is concerned. We must look at reality. The loss of the street railway system would be a severe blow to Helena; it is unnecessary to dwell upon the social harm that would be worked thereby. We are satisfied that patrons of The Helena Light and Railway Company would rather recoup street railway losses out of electric earnings, thereby insuring the continued functioning of the railway, than abandon the railway system for greatly decreased light and power rates. It must be distinctly understood that we yield the principle of separation only because of the facts of this particular case, and herein only for so long as necessary. See: *Fort Scott Gas and Electric Co. vs. City of Fort Scott*, PUR 1915 B, 481; *In re Monmouth Public Service Co.*, PUR 1919-E 498.

"After a full investigation and a review of all of the evidence and exhibits submitted in this consolidated proceeding, we find that the Helena Light and Railway Company is not entitled to an increase in its revenues as petitioned for in the case of its street railway utility and its gas utility. We feel, however, and so find, that a rate readjustment is necessary, and with that end in view we shall reduce the electric light rates to the same basis as that established in a majority of the larger cities of the state, receiving service from hydro-electric plants; we shall increase the gas rate to \$2.25 per 1000 feet with a discount of 20 cents per 1000 feet sold, and a monthly minimum charge of \$1.00; we shall increase the street railway fares within the city limits to a seven-cent cash fare and 6¼ cents for one ticket in blocks of four, eight or sixteen, and order the following line rates: 10c to Broadwater, State Nursery and Central Park; 15c East Helena rate, each way; 9c between City Limits and East Helena; 8c Smelter rate; 25c Fair Grounds rate, each way; and hereby find necessity for the changes and rates just enumerated.

"We further find that the present rate for electric energy furnished business houses, being lower than residence rates for the same quantity consumed, is discriminatory and must be eliminated.

"Likewise, we find that the present practice of the company in furnishing its employees gas at a fifty per cent discount and its resident officials gas free of charge is grossly discriminatory and must be discontinued. Salaries or wages of the company's employees must be adjusted without any reference to their use of the company's gas product. In connection with the increase in the gas monthly minimum charge we call attention to the fact that the investment per consumer in the gas plant is approximately \$185.00. The interest alone on this investment represents \$14.80—the cost of the gas and the

service would materially increase the amount. A minimum of 50 cents per month, or \$6.00 per year, is obviously altogether too low. Consumers can easily economize on coal during winter days, when the temperature will permit of more gas being used, and thus receive the full benefit of the increased minimum."

## REFERENCES

### RATES

#### 224.5—Rates Fixed by Contract

Rising Costs and the Utility Commissions, by David E. Blair. *Electrical Review*, July 31, 1920. p. 177.  $\frac{3}{4}$  pages.

At a recent meeting of the St. Louis Electrical Board of Trade, Mr. David E. Blair, of the Missouri Public Service Commission, said:

"Reasonable compensation must go hand in hand with adequacy of service. The cost of rendering that service must be provided for in the rates, regardless of franchise limitations, as the state cannot suffer its police power to be abridged or limited by a franchise entered into between a municipality and its utility. Bare cost of operation does not furnish or guarantee ability to render service and no utility can long remain in a position to render adequate service unless it can show earnings to those who own its stocks and bonds. \* \* \*

"The increasing costs of operation rendered the utilities incapable of furnishing adequate service at franchise rates, and they suddenly found their only salvation from bankruptcy or costly injunction proceedings in the courts lay in the very boards whose creation they had so bitterly opposed. The public, to its utter surprise, learned that such boards not only had the power to fix rates lower than those named in the franchise, but also the power, and sometimes the duty, to authorize rates in excess thereof. Positions were exactly reversed in short order. The opponents of state regulation became its champions; its former champions became its critics.

"It has been no pleasant task to concur in rulings which have resulted in increasing street-car fares, gas rates and charges for electricity, water and telephone service beyond the rates named in supposedly airtight franchises. It is true that while men smilingly and complaisantly pay two or three times the old prices for food and clothing, building materials and for their amusements, an advance from 20% to 40% in utility service rates is always met by a storm of popular disapproval. Somehow the general public does not get the idea that if labor, fuel and materials have advanced from 75% to 300% their utilities will have difficulty in rendering service at the same old price or have any honest claim for an increase in the price of their product. That is a most short-sighted attitude. But that is the attitude of at least the unthinking part of the public, and these constitute the chief critics of the commission.

"One thing is sure and that is that unless the returns on utility investments are made more attractive and certain, it will become more and more difficult to enlist new capital in such business and the public will ultimately be the chief sufferer. Those people who already have their money invested in such enterprises cannot be expected indefinitely to put in more and more money to protect that already invested."

## 623—Power Factor

Must Consider Three Matters in Power-Factor Contracts, by R. H. Ashworth. *Electrical Review*. August 7, 1920. p. 218.  $\frac{3}{4}$  pages.

- In presenting a paper on power-factor in connection with power contracts, Mr. R. H. Ashworth, commercial manager of the Utah Power & Light Company, Salt Lake City, Utah, said:

"From the practice of various central-station companies, from opinions expressed by various state commissions, from reports of National Electric Light Association committees, and particularly from a study of the effect of poor power-factor, it would appear that for the larger installations at least 85% should be considered a reasonable power-factor and that any power-factor lower than this should be penalized in figuring rates.

"An average power-factor determined as above will result in a lower power-factor and a greater penalty than, for example, the power-factor and a greater penalty than, for example, the power-factor determined at the time of occurrence of the maximum demand since the power-factor so determined will likely be the highest power-factor established by the consumer. A correction for power-factor based on the power-factor established at the time of maximum demand does not appear fair to the company since it does not take into consideration very low power-factors which may occur at times of light load nor on the other hand does a correction based on the power-factor established at time of light load seem to be fair to the consumer since he gets no credit whatever for higher power-factors which may be established.

"In studying power-factor clauses of various companies it is found that the most general method of applying a penalty is by the use of what may be termed the proportional method, namely, that the demand upon which the consumer will be billed shall be the actual demand multiplied by what is considered a reasonable power-factor and divided by the actual power-factor, if the power-factor is below what is considered reasonable.

"Since low power-factor necessitates additional capacity to carry the load of the consumer, a penalty for low power-factor is concerned primarily with the investment portion of the rate schedule, and since practically all companies, at least for their larger loads, are now applying a demand-plus type of rate, the demand charge of which at least in theory is designed to protect the investment made to serve the consumer, the most logical method of taking account of power-factor in the rate schedule is by a correction in the maximum demand upon which the demand charge shall be based and the proportional method is the one suggested.

"There is one other question which has not been touched upon, namely, a bonus or premium to the consumer who may maintain a power-factor in excess of what is considered reasonable. A great many companies do not consider that such a bonus or reduced rate should be allowed where the consumer operates in excess of reasonable power-factor since in the first instance the rate schedule should be based on the assumption that all consumers will maintain a reasonable power-factor, and further, since a correction in power-factor above 85% or 90% results in benefits which are relatively small.

"The application of a penalty for low power-factor would not be made so much with the idea of increasing earnings as toward the end of having a method by enforcement of which there will be an incentive for the consumer to improve his power-factor."

**PUBLIC SERVICE REGULATION****100—Public Service**

Resolution Passed at a Meeting of the Board of Governors of the Investment Bankers Association of America, May 8, 1920.

The following Resolution, passed at a meeting of the Board of Governors of the Investment Bankers Association of America, on May 8, 1920, reflects the opinion of representative investment bankers of the country with respect to three important subjects affecting the credit of Public Utilities and their ability to render adequate public service; the limited term franchise as compared with indeterminate permits, state regulation as compared with local regulation and appointive commissioners as compared with elective commissioners.

"Whereas, investment bankers are expected to purchase and distribute the securities of public utility companies which must be sold if utilities are adequately to supply the demands upon them for local transportation, light, heat, power and the transmission of messages, and

"Whereas, the credit of many of the public utility companies will not permit the sale and distribution of such securities, thus interfering with the development of many commercial enterprises, the welfare of many communities and the comfort and convenience of a great many people, and

"Whereas, the credit of the public utilities is largely dependent upon the attitude of the public as expressed through the various governing and regulatory bodies,

"It is hereby resolved by the Board of Governors of the Investment Bankers Association of America that as steps in the restoration of the credit of public utilities

**112.1—Indeterminate Permits**

"1. Term franchises should be superseded by indeterminate permits securing the right to operate under proper regulation during good behavior with provisions for equitable adjustment of rates from time to time, as tending to eliminate controversies which inevitably impair the public service, the credit of the companies involved and the value of their securities.

**220—General Power of Commissions**

"2. The power of regulation and control of public utilities should be vested in State Commissions as tending towards standardization of regulation which is not possible under local regulation.

**211—Qualifications—Appointment**

"3. Members of State Commissions should be appointed.

"If Commissioners are elected they are frequently embarrassed by political policies and platforms in the consideration of questions which should be decided only on sound economic and financial principles."

**253—Commission Reports of Decisions**

Decisions of the Pennsylvania Public Service Commission. Volume II May 21, 1915, to July 1, 1917. 1234 pages.

The Pennsylvania Public Service Commission has published in bound form Volume II of the decisions of the Commission handed down during the period from May 21, 1915, to July 1, 1917, and the opinions of the Appellate Court in appeals therefrom.



Vol. 17

August 26, 1920

No. 22

# RATE RESEARCH



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### NEW JERSEY

#### 630—Cost of Supplies

The Electric Light and Power Company of Hightstown, Application For Authority to Increase Its Electric Rates. Decision of the New Jersey Board of Public Utility Commissioners, Granting an Increase. August 3, 1920.

On June 14, 1920, the Electric Light and Power Company of Hightstown filed with the Board a proposed change in its schedule of rates involving increases to certain of its customers.

A general decrease in the rates theretofore charged was made in 1916. Since that time (in 1918) the company applied for the approval of certain increases which were denied in part. The partial increase granted was not made effective by the company and it is at the present time operating under the reduced schedule filed in 1916.

The company operates a step down substation, a switchboard and distribution system and purchases current from the Public Service Electric Company under its wholesale power rate. Current is sold at retail for lighting and power under the schedules indicated above, the retail power schedule being the same as is charged by the Public Service Electric Company.

The rates charged by the Public Service Electric Company under its wholesale power schedule were adjusted as of February 27, 1918, by the addition of a 25 per cent surcharge on all bills. Prior to this, in 1917, an addition was made to the rate schedule to compensate the Public Service Electric Company for variations in the price of coal. Those charges, in addition to the former wholesale power rates, have been applied to bills rendered to the Electric Light and Power Company of Hightstown for energy received by it since the dates mentioned. For the year 1918 the 25 per cent. surcharge amounted to \$1,101.89 and for the year 1919 to \$1,382.20. The addition due to the coal clause amounted in 1918 to \$13.56 and in 1919 to \$59.89.

The Commission says:

"Inasmuch as the reduction of the rates in effect in 1916 was based

upon the advantages obtained through the purchase of energy at the wholesale power contract from the Public Service Electric Company, it would appear only equitable that the increase in cost for this power to the Electric Light & Power Company of Hightstown should be reflected in the rates which it is allowed to charge.

"In addition to the increase in the costs of power indicated above, wages and salaries have increased about \$1,200 for the year 1919 over the year 1917, taxes \$363 and other items bringing the total increase for these items to about \$3,000. The expenses for 1920 as compared with 1917 and 1919 will show still further increases due to the following:

"The operation of the coal clause in the rate schedule under which this company purchases power from the Public Service Electric Company.

"The maintenance and depreciation of a motor truck which the company finds it necessary to purchase.

"An increase in expenses due to the payment of a higher salary to secure the permanent services of an assistant to the superintendent and also increases in the salary of the superintendent.

"These items will involve an increased expenditure for the year 1920 over 1919 of approximately \$2,100.

"The increase in expenditures for twelve months commencing with August 1, 1920, over the corresponding figures for the calendar year 1919 is estimated as \$4,167.47.

"Based upon present consumption of current, the estimated increase in gross revenues due to the proposed changes in the rate schedules is about \$2,500 per annum.

"In determining the rate base in the former case, a deduction was made for absolute and discarded plant. As the revenues in the past have not been sufficient to allow for the amortization of the old property, some provision must be made for this. Under these circumstances the anticipated increase in net earnings will fall considerably below the increases in cost already realized."

The Commission prescribed an increased schedule of rates to become effective with the August sales.

## **VIRGINIA**

### **300—Investment and Return**

Chesapeake and Potomac Telephone Company, Application For a General Revision of Rates. Decision of the Virginia Corporation Commission, Fixing Rates. July 23, 1920. (Continued from 17 Rate Research 323-327.)

Regarding the Lynchburg, Roanoke, Christiansburg and Pulaski franchises, the Commission says:

**224.5—Rates Fixed by Contract**

"Reading the sections of the several franchises, in their entirety, it seems manifest that the intent of the parties was to establish by contract a limit of charge much higher than the rate proposed to be charged immediately at the time of the franchise grant; to mutually agree that the rates charged should be reasonable, and to confer upon this Commission the power to determine what rates were reasonable within the contractual limit. We think it probable that at the time the franchises in question were granted both parties considered that the practical effect of the contract was to confer entire regulatory jurisdiction of rates upon this Commission. That the contractual limit was far above the rate then proposed to be initiated is shown by the fact that the considerable increase in rates, put into effect under Federal operation, in no case exceeded the contract maximum; that the increases over the Postmaster General's rates now proposed, in many instances do not exceed the franchise maximum, and in these instances in which such maximum is exceeded, the excess is slight. The primary intent of the parties, we conceive, was to confer upon this Commission jurisdiction of rates and charges within the respective municipalities, the contractual maximum being inserted by the municipalities simply as a precautionary measure and with no idea on the part of either of the parties that the maximum rates so fixed might prove inadequate. However, this may be, the franchise maximum is a contractual right of the municipalities, protected by the decision in the Clifton Forge case, and the jurisdiction of the Commission to fix rates is limited to the maximum so established.

"But it is contended by the Telephone Company that the attempt on the part of the municipalities to fix, by the several franchises, rates and service outside of the corporate limits of the cities and towns in question, invalidates the entire rate provisions of such franchises and operates to confer upon the Commission entire jurisdiction of the question of rates.

"That a municipality is without legal authority to enter into a franchise contract with a public utility, fixing rates and service beyond its own territorial limits, is admitted by most of the interested municipalities and is not open to doubt in the light of the explicit limitations imposed by the Constitution, Sec. 156 (b).

"The Commission has jurisdiction of rates and service outside of the corporate limits of cities and towns, even where such rates and service are attempted to be fixed by municipal franchise.

"The question is, then, as to the effect of such admittedly *ultra vires* action upon rates and service within the corporate limits of such

city or town. Does it render the whole franchise void? Does it invalidate only the rate provisions of the franchise, or is the franchise contract invalid as to those stipulations relating to rates and service beyond the corporate limits of such grantor, but otherwise valid and enforceable?

"None of the parties in interest suggests that the effect of the *ultra vires* action is to invalidate the entire contract. The municipalities naturally would make no such contention, while counsel for the Company in his Note of Argument repudiates the idea that the whole contract is void and contends that only the rate provisions thereof are invalid. The municipalities take the position that the contract is severable and that those portions of the franchise which relate to rates and service outside of the corporate limits, may be discarded without substantially—or indeed, at all—affecting those portions which relate to rates and service within the corporate limits, which latter portions remain valid and binding \* \* \*

"We are of the opinion that the franchises in question are severable; that in so far as the several franchises undertake to fix rates and service outside of the corporate limits of the grantor, they are *ultra vires* and of no effect but in so far as the franchises cover rates and service within the municipal limits, they are valid and binding contracts; that the rates fixed by the franchises in territory outside the corporate limits of the grantor of such franchise being void and of no effect, are subject to the jurisdiction of this Commission, and finally, that this Commission has jurisdiction to fix a reasonable rate for service within the corporate limits of the municipalities here in question, provided that the rate so fixed does not exceed the maximum rate specified in the franchise."

The Radford franchise was granted in April, 1914. It fixes maximum rates, adjusted to a sliding scale, provides for "free service" throughout Montgomery County to subscribers of its Radford exchange, and provides: "The aforesaid rates shall, at all times, be subject to such changes as are approved by the State Corporation Commission of Virginia, or any other body in said State, which now has, or may hereafter have, jurisdiction to regulate rates charged by telephone companies."

The Commission says:

"The power of the Commission cannot, as contended, be limited to the increase or decrease of rates within the franchise maximum for the obvious reason that the power of the Commission extends to changes in the 'aforesaid rates,' which 'aforesaid rates' are the maximum franchise rates. Without doubt, then, the Commission may change the established contract maximum, and we fail to discern any sufficient reason which would confine the power of the Commission to a revision of that maximum downward. Certainly the franchise itself does not so provide, and such an interpretation

would do violence to the language of the agreement, would be destructive of the reciprocal rights and obligations of the parties thereto, and would be at variance with the policy hereinbefore enunciated. Nor is the result herein reached inconsistent with the decision in the cases (Lynchburg, etc.) already considered, for the language of the franchises in those cases is essentially different from that now under consideration. Under the former, the Commission is given no power to change the maximum contract rates, and the regulatory powers conferred upon the Commission by the franchises are simply the powers enjoyed by it under constitutional sanction. Those franchises in no particular increase the constitutional power of the Commission to regulate rate changes under a franchise contract, providing for 'reasonable rates not in excess of those specified.' The extent of that power has already been considered in connection with those cases. \* \* \*

"The proviso to Sec. 156 (b) of the Constitution permits a city to prescribe rules, regulations or rates of charge in connection with services performed by a public service corporation under a municipal franchise 'so far as such services may be wholly within the limits of the city \* \* \* granting the franchise.'

"Admittedly, the service above mentioned is not to be performed in the City of Radford, and it would probably be conceded that if, as a part of the consideration for the granting of the franchise, the City had prescribed a toll rate of five cents or of one cent to be paid by Radford subscribers for communication throughout Montgomery County, the stipulation would have been invalid. What difference is there in principle between the franchise provision last mentioned and the franchise provision in question?

"The object of the constitutional provision referred to was not only to permit a municipality to prescribe rates, rules and regulations as conditions of a franchise grant but to prohibit such municipality from hampering public service corporations in the performance of their public duties in cases in which the municipality and its inhabitants were not primarily and directly concerned. The provision of the franchise in question is clearly an attempt to regulate the Company's service in Montgomery County, and is obnoxious to the Constitution."

In conclusion the Commission says:

"In the cities of Roanoke, Lynchburg and Winchester and the towns of Christiansburg and Pulaski and Dublin the Commission approves and the Company may charge the rates as requested in the Company's petition, which may not, however, as stated above, exceed the maximum fixed in the franchise in this instance.

"In the cities of Radford and Suffolk, where the Commission takes jurisdiction, the general order in this case will apply."

*(To be continued)*

**NEW YORK****300—Investment and Return**

George W. Whitehead, Mayor of City of Niagara Falls v. Niagara Falls Gas and Electric Light Company, Rehearing of Complaint as to Gas Rates and Service. Decision of the New York Public Service Commission (2D), Denying an Increase in Rates. March 11, 1920.

An order was entered June 12, 1919, in this proceeding, fixing the rate for manufactured gas at \$1.90 per thousand cubic feet, with a discount of 15 cents per thousand for prompt payment. Said order was based on an opinion of the same date. (Reported in 15 Rate Research 339.) The price so fixed was less than that which had been initiated by the company, namely \$2.20 gross and \$1.98 net. The company made application for a rehearing and that it be permitted to present proofs bearing upon the going value of its plant, thereby supplementing the proofs already presented, claiming that the rate fixed by the Commission was confiscatory and inadequate to furnish a sufficient and proper return upon the investment, etc. The rehearing was granted, and the company gave additional evidence as to the value of its property devoted to the public use, and also demonstrated that in the period which succeeded the previous hearings the expenses of operation had materially increased.

For about a year prior to the effective date of said order, the price of \$2.20 per thousand cubic feet gross and \$1.98 net had prevailed. Upon the rehearing, the company was therefore able to show its income account for the first six months of 1919 at the last named rates, and as thus shown the gas sales were 23,031,000 cubic feet, producing a revenue of \$50,175.71, equal to \$2.17 per thousand cubic feet; with operating expenses of \$46,315.95, equal to \$2.01 per thousand cubic feet. It was shown that at the lower rates imposed by the Commission, namely \$1.90 gross and \$1.75 net, the revenues would have been \$5,297.15 less for the six months, thus showing an operating deficit of \$1,437.39. During all this period operating expenses have been steadily increasing and in general are still increasing. The company now asks that its superseded rate of \$2.20 gross and \$1.98 net be restored.

The view of the company apparently is that a higher rate would be commercially impracticable and have the effect of reducing consumption to a point where the revenue would be largely curtailed, while the rate which it urges will pay at least operating expenses and keep the company going until it can improve and enlarge its plant and system, at the same time having the effect of restricting consumption to a point which it is possible for it to supply with its present facilities at a reasonably safe pressure.

**315.1—Going Value**

The Commission says:

"As was intimated in the former opinion, I do not believe that under



the facts of this case any allowance for going value can be made. The Niagara Falls Gas Company's plant which was taken over by the respondent in 1900 was constructed about 1860. We have no record of operations prior to 1906; since which date we have the annual reports, filed either with this Commission or with its predecessor, the Commission of Gas and Electricity. In the earlier opinion will be found a review of the history of the company, from which it clearly appears that the existing gas plant is entirely inadequate, that the generating apparatus is obsolete and uneconomical, and that the property never has been profitable, and that the business has never been brought to a successful basis. We do not understand the doctrine of the case of *People ex rel. Kings County Lighting Co. v. Willcox*, 210 N. Y. 479, to admit of the capitalization of the losses of the company over this long period of years under the circumstances stated. As stated in the earlier opinion—

“The theory of an allowance for going value as laid down in the cases seems to be that such allowances shall in the main be based upon expenditures, if any, which the company may have made in building up its business during its earlier years. It is quite reasonable that meagerness of return during the initial years of an enterprise which has been well conceived and wisely and energetically managed and brought to a condition of success should also in fairness be made up by the public. Such failure of early return is a natural incident of the business. But in this case the evidence is limited to shortage of return which has continued for seventeen years, or during the entire life of the company, until in the aggregate it far exceeds the original investment, and there is no evidence of expenditures in building up the business except as they may be implied. The going value is thus not an incidental part of the valuation but composes by far the larger portion. This condition results in a requirement of a rate which the company realizes it is useless to ask for because it would be far in excess of what the traffic will bear. In the meantime important parts of the plant have become obsolete, and it appears that the legitimate field of the company's enterprise has never been followed up and occupied.”

“The theory of respondent's counsel seems to be that a public guaranty is behind a public utility in such wise that the public can be called upon to make good the losses of the utility without regard to their causes or origin. We can find no authority for such a doctrine, and are of the opinion that upon the facts shown in this record no ‘going value’ has been established.”

### 311.2—Reproduction Cost New

Another statement placed in the record was a calculation of the value of the tangible property that the reproduction cost thereof in 1918 would have been 70 per cent greater than its actual cost at the time of

installation. Other evidence was given by the witness Merritt as to reproduction cost in 1919.

The Commission says:

"The statute provides that the rates shall be fixed with due regard among other things to a reasonable return upon the amount of capital actually expended. This language differs from that contained in some of the analagous statutes which make reference to a reasonable return upon the value of the property of the corporation used or useful in the public service. Whether or not these variant terms mean the same thing in substance, it is quite obvious that although the present day costs of the constituent elements which have entered into the construction of the physical plant, would be largely in excess of the actual costs at the time of construction, it does not necessarily follow that such increase constitutes any present existing value which can in any possible way be realized upon. It does not appear that the market value of the securities representing the property in any degree reflects such an increase; on the contrary, the only inference to be drawn from the evidence and from the universally acknowledged facts with respect to the market values of such securities during the present period is that such market values, instead of reflecting an increase reflect a decrease.

"Neither was it attempted to be shown that any increased amount could be realized by a disorganization of the property and a sale of the constituent elements. The greatest value of these elements in a reasonably successful plant is their combined value as a going property. When this is sacrificed and the physical property is wrecked and junked, large elements of value which originally entered into their construction and installation are totally lost. These elements include labor, superintendence, engineering, legal and organization expenses, interest and insurance during construction, promotion, and other overhead costs. Especially is this true where, as in this case, the rates charged by the company, although unremunerative, are all the traffic will bear, so that increased prices would be of no avail. If the utility were able to show that at its volition it could, if it so desired, secure for its property the alleged increased value, either by selling it as a going concern or by disorganizing the plant and selling it piecemeal, then it might be claimed with much force that by leaving the property in the public service a sacrifice of the realizable value is being made which should be the just measure of present value for rate making purposes. But when such is not the case, it is difficult to recognize where the claimed enhancement has any existence in fact. If it is not there in any tangible sense, if it is not capable of realization in any practical way, then it is difficult to see how it can be said to exist at all.

"The amount actually expended (gas department) by this company has been the subject of frequent examination by the Commission

and its officials, and the fixed capital accounts have been adjusted by the company in conformity with the results of such examinations. The value or investment as of August 31, 1918, as shown by such accounts, without any deduction for depreciation, amounts to \$274,153.08. This figure corresponds closely to Forestall's estimates and I think it fairly represents the amount actually expended as of that date. The subsequent financial operations and any necessary consideration of depreciation reserves can be readily adjusted to this figure, and the increased market value of land taken into account as well as an allowance for working capital.

"I think that upon the record in this case the claim for increased investment based upon the advanced costs of present day reconstruction has not been sustained. These statements are not intended as a determination of the company's investment, or of the values of its property devoted to the public use. As stated above, such a determination is not necessary for the disposition of this case, and is therefore not made; but it is felt that the respondent is entitled to some expression of the views of the Commission on the items discussed, having in mind the bearing that such views may have upon the future proceedings of the company."

#### 340—Rate of Return

"In this case, however, the company realizes that a rate which would, on its face, produce a reasonable average return upon capital actually expended, would be so high as to curtail revenue. The reasons for this appear clearly from the facts disclosed in the Forestall report, the previous opinion in this case, and the statements hereinabove set forth.

"As stated by Chairman Stevens in *Buffalo Gas Co. v. City of Buffalo*, P. S. C. 2nd Dist., at p. 630—

"The public should be required to pay a return only upon a plant which is suited and adapted to its needs with of course a reasonable allowance for future expansion and growth, which is just as important for the public as it is for the company; and if a given plant is not suited and adapted to the needs of the public which it serves, but is more extensive in capacity than is reasonably required for such needs and reasonable development in the future, or if it has been extravagantly constructed, then clearly and upon the plainest principles of equity and justice the company should not be entitled to a return beyond that which would be demanded upon a plant properly located, economically constructed and suited in capacity to the needs for which it is designed."

"In *Buck et al. v. Judge*, decided July, 1919, the Commission held that the public is entitled to be served by a reasonably modern plant which is not obsolete or wasteful in its method and which turns out its product with some reasonable degree of economy, and that under

the facts in that case, which are very similar in principles to those found here neither the amount of the investment nor the fair value of the property used in the public service was necessarily the measure by which the Commission must determine a just and reasonable rate.

"It is the function and the duty of the utility to supply its product with reasonable business judgment and economy, and the employment of equipment and facilities designed to serve such consumers as are within its field and demanding its service. Unless these ordinary requirements of good business policy are complied with, it can be readily seen that an unreasonably high price will be required in order to yield a reasonable rate of return on the capital employed.

"This Commission has frequently enunciated the rule, that while ordinary faults of service which are susceptible of remedy should not be allowed to have a bearing upon rates, still where the service is shown to be inherently or generally bad, and not susceptible of correction, the rule is to the contrary.

"In this case it would appear that none but an exorbitant price for its product, a price which it would be useless to impose even if the company had the right so to do, will yield any substantial return on the capital expended. The company during its history, which has been unprofitable, has accumulated a deficit considerably in excess of its actual investment, and is constantly running in arrears. In order to operate with any chance of success it must renew its coal gas plant and make large extensions to its mains. Its fixed capital, gas and electric, as of a recent date was something in excess of \$300,000, its bonded debt about \$200,000, and its floating debt about \$400,000. Its deficit was \$476,000, which by reason of constant loss in its operations is steadily increasing. The new outlay required for improvements and extensions is estimated at \$175,000. The company's tentative plan to meet this situation is to increase its funded debt to the extent necessary to defray the costs of the needed improvements and extensions and to absorb and cancel its deficit. As a preliminary step it desires to increase its rate for gas. It admits that its service pressure is too low, and that the increased price will be of assistance in this respect because it will drive a certain percentage of its consumers off the lines, thus rendering the service more nearly satisfactory to those who remain. Another argument advanced is that in order to bring about its proposed new financing the company must be able to put forward a favorable financial prospectus which will appeal to the investing public. The present price for gas is high when considered relatively with prices prevailing elsewhere in communities of comparable size.

"Assuming the views of the Commission as to a proper rate base to be approximately correct, the proposed financial plan would load the

company with fixed charges largely in excess of its ability or even its right to earn. This scheme would seem to be neither sound nor permissible. The Commission is of the opinion that the large accumulated deficit should be faced by the owners of this property as a loss already made, and eliminated from the liabilities. With a capital account limited to moneys actually expended, both past and future, and with the necessary improvements and extensions and an aggressive business policy, the company may still achieve success, but any greater load would seem to be beyond its ability to carry even assuming its legal right to attempt it.

"The reasons assigned by the company for the restoration of the \$2.20 rate (\$1.98 net) are not such as the Commission can entertain. Where an increase in rate has the effect of restricting output, such restriction must be regarded as an unfortunate but unavoidable incident of the increase. But to increase a rate for the purpose of restricting output so as to justify the inability of the company to supply reasonably good service to its consumers would be a proceeding hostile to all principles of public utility regulation.

"As previously stated, the present rate of \$1.90 gross and \$1.75 net is high as compared with rates in cities of similar size with Niagara Falls. It was fixed as a commercial rate, or what the traffic would bear, upon the grounds stated in the former opinion. The fact that the higher rate which is succeeded, and the restoration of which is now urged, had the effect of restricting output, indicates that the higher rate was more than the traffic would bear. It was fixed, furthermore, as a temporary rate which would serve only while the utility was determining upon a permanent policy, it being recognized that a financial reorganization was necessary in order to restore the financial integrity of the company. It was fully as high in all probability as would be necessary to yield a reasonable return upon capital actually invested after the company had rebuilt its plant, extended its lines, and effectually covered the field which lies open to it. This view is confirmed by the Forestall report. The company advances the argument that it needs the new rate as a basis for a financial showing upon which it can bring about the contemplated reorganization. The implication is that with such a figure as a basis the company would be able to demonstrate that with a new plant, extended mains, and added business, it would be able to earn a reasonable return upon its investment and also upon its large deficit. For reasons above stated, the Commission can not look upon that argument with favor.

"The rate which the company demands will yield slightly more than operating expenses. The present rates will yield slightly less. We do not consider the variation vital. The question of confiscation does not enter. Neither rate will produce a compensatory return on the conceded investment, nor will any rate which the traffic will bear. "The views expressed lead to a denial of the application, and an order will be entered accordingly."

**COURT DECISION REFERENCES****112.5—Ordinance Rates**

Ottumwa Railway and Light Company v. City of Ottumwa, et al. Decision of the Supreme Court of Iowa. August 9, 1920.

On July 12, 1901, the city of Ottumwa granted to the Ottumwa Railway and Light Company the right to operate a street railway system for the term of twenty-five years, and fixed a rate of fare of five cents.

On December 23, 1918, defendant's Council passed a resolution authorizing a six-cent fare until a treaty of peace between this Government and its then enemies should be signed and ratified, with provision that when that was done the fare should again be five cents, "unless the City Council shall at any time see fit to make further concessions."

On the 3rd day of April, 1919, the Council attempted to revoke and rescind said resolution by passing the following one: "That in view of the fact that the war is over and on the holding of Judge Wade in the Des Moines Street Railway case, it is resolved that the former ordinance is hereby rescinded and it is especially resolved that the company shall not be permitted to charge more than the fare fixed in its franchise with the city." Thereupon the plaintiff instituted proceedings, designed to restrain the carrying out of the said rescinding resolution. So far as same is material in view of our decision of this appeal the prayer of the petition was that the defendant city, its mayor and commissioners, and each of them, and their successors in office and counsel, agents and employees be restrained and enjoined from enforcing or attempting to enforce said rescinding resolution, and that a temporary injunction issue to that effect upon presentation of petition.

A temporary restraining order conferring to this prayer was duly issued. On motion of defendant this writ was dissolved. Hence this appeal.

**224.5—Rates Fixed by Contract**

In reversing the holding of the lower court, the Supreme Court says:

"The dissolution might be construed to be a holding that a franchise fixing rates of fare was a contract that could not be modified even if one party applied for and the other consented to a modification. But we are inclined to the opinion that the decision below did not because it should not rest on such a proposition. It is very clear that the vital ground upon which the court proceeded rests on the conclusion that the said franchise constituted a binding contract from which the plaintiff corporation may not be relieved, no matter how disastrous and confiscatory the performing such contract might be. In other words, that plaintiff has no more right to relief in equity than has anyone who is capable of contracting, has made a valid contract, and finds it to be a losing venture.

"If street railway corporations were dealt with in Section 725 of the Code of 1897, it would be beyond all question that it was error to dissolve said temporary injunction on the ground upon which it was dissolved. That statute in positive terms forbids any abridgement of the right to regulate and fix charges of service corporations named in the statute, either by ordinance, resolution or contract. No one would now contend in the teeth of the statute prohibition that there can be no contracting that rates fixed for service shall not be changed. See *Tipton vs. Light Co.*, 176 Ia. 224; *Selkirk vs. Gas Co.* (Ia.), 176 N. W. 301. And see *San Antonio Company vs. City*, 257 Fed. 467. To like effect is *Iowa Company vs. Jones* (Ia.), 164 N. W. 780. And in the last case it is held that the fixing of maximum rates in a franchise

ordinance is, therefore, not a contract that such rates may not be changed before the time stated in such ordinance has lapsed; and that approval by the electors of rates in the franchise is merely an approval of the rates fixed by the franchise as rates temporarily settled with the understanding that the same might be changed either upward or downward. And see *Rogers Park Co. vs. Fergus*, 189 U. S. 624 (21 Sup. Co. Rep. 480).

"But as street car corporations are not named in Section 725, this appeal cannot be sustained on the ground that contracts fixing unalterable rates are forbidden by statute law. We must inquire into the validity of such a contract where no statute prohibits its making. The authorities which speak to the question when no statute condemns such contract are practically unanimous in holding that such a contract is invalid. Absence of legislative prohibition does not enter into the case law on the subject. It is not material that no statute invalidates such contract. The vital requirement is that power to make a contract fixing permanent rates be given expressly and by 'unmistakable grant.' *Rosecrans vs. U. S.*, 165 U. S. 263 (17 Sup. Ct. Rep. 302); *U. S. vs. Jackson (C. C. A.)*, 143 Fed. at 787, 788. The grant must be in explicit and convincing terms and all doubtful expressions are to be resolved against power to contract for irrevocable rates—*Knoxville Gas Co. vs. City (C. C. A.)*, 261 Fed. 283. The Supreme Court ruled in *Home Telephone Co. vs. Los Angeles*, 211 U. S. 274, 277, 278 (29 Sup. Ct. Rep. 54), and on review of the authorities, 'all these cases agree that the legislative authority to the municipality to make the contract must clearly and unmistakably appear.' Without such clear permission the ordinance may command but not agree. To like effect are *Bank vs. Billings*, 4 Pet. 514; *Railroad Commission Cases*, 116 U. S. 307; *Vicksburg vs. Dennis*, 116 U. S. 665; *Freeport Water Co. vs. Freeport*, 180 U. S. 597; *Stanislaus County vs. Company* 192, U. S. 201, 211; *Metropolitan Co. vs. City*, 199 U. S. 1; *Water Co. vs. Hutchinson*, 207 U. S. 385. This rule is not arbitrary, but is builded on sound and serious considerations. The decisions referred to, and numerous others to like effect, base themselves upon the following propositions: (a) The power to fix rates is purely governmental and legislative and in some aspect an exercise of the police power; *Rogers vs. Fergus*, 180 U. S. 624; *Home Telephone Co. vs. City*, 211 U. S. 265; *Tipton vs. Light Co.*, 176 Ia. 224; 3 *Dillon Mun. Corp.* (5th ed.) par. 1325; *McQuillin, Mun. Corp.* par. 1729; (b) This governmental power cannot be limited by contract, much less entirely abrogated by it, and it has no limitations except that both parties must respectively permit and be satisfied with such rates as shall be just and reasonable. *Iowa Company vs. Jones (Ia.)*, 164 N. W. 780; *Tipton vs. Light Co.*, 176 Ia. 224; *Abbott Municipal Corporations*, par. 915, approved in the *Tipton* case, and *Antonio Co. vs. City*, 257 Fed. 467; *City vs. Gas Co. (N. Y.)*, 80 N. Y. S. 1693; *Rogers Park Co. vs. Fergus*, 180 U. S. 624; (c) that if it were held a contract could provide for unalterable rates, its enforceability would, in whole or in part, extinguish an undoubted governmental power. *Home Telephone Co. vs. City*, 211 U. S. 265; 29 Sup. Ct. Rep. 50. In amplification it has been said that, therefore, there is no occasion for unalterable rates since all rates must at all times be reasonable, fair, adequate and non-confiscatory; that the governmental power may not be abridged by contract since the municipality may not use its governmental powers to confiscate, and, on the other hand, the service company may not demand excessive rates: *Rogers Park Co. vs. Fergus*, 180 U. S. 624, 21 Sup. Ct. Rep. 490. In *City vs. O'Connor (Ill.)*, 116 N. E. 215, the Court said: 'No contract can be made which assumes to surrender or alienate a strictly governmental power which is required to continue in existence for the welfare of the public.' In fewer words, the cases proceed on the general theory that it is against public policy to contract for unchanging rates; that there must be no such contract because its enforcement might on the one hand fasten what proves to be an exorbitant charge upon the patrons or, on the other, prove a rate that will confiscate the property of the service corporation.

While there are other lines of reasoning advanced in the authorities, in the main and at the present time, the decisions run on the broad ground that public policy forbids such contracts unless the legislature, the ultimate Judge of what is public policy, declares unmistakably that such contracts do not offend that policy. *Murray vs. City*, 226 U. S. 318; *Fort Smith Company vs. Fort Smith*, 202 Fed. 581.

"It being so clear, then, that the trial court erred unless there be indubitable legislative authority authorizing the fixing of permanent rates, the real controversy is over whether such authority has been given, and nothing should confuse the issue. \* \* \*

"If such legislative grant exists, the Council could rescind its permission to charge a six-cent fare unless to reduce the fare to five cents amounts to confiscation by exacting service at a non-compensatory rate. *Knoxville Gas Co. vs. City* (C. C. A.), 261 Fed. 283. If such grant has not been made, then the franchise ordinance is not a contract, and a higher fare than fixed in it can be obtained if required to obtain reasonable compensation. And neither resolution or rescinding resolutions can prevent the obtaining of such compensation. It all depends upon whether the legislature has sanctioned a contract making permanent rates of fare.

"The claim that such grant exists is this: (a) Section 725 prohibits the making of contracts for unalterable rates with named public service corporations. And it makes no reference to street car service or corporations, though such corporations were in existence when said statute was enacted; (b) Before the existence of said statute, the common law forbade the contracting for such rates with any and all public utilities. Therefore, the only explanation of limiting the ban to the corporations named in Section 725 is that the legislature intended to permit such contract with any corporation not named in the statute. The ultimate argument is that because this particular statute is silent as to street car service the ban against contracting for irrevocable rates for such service has been removed by application of the rule that what is not included in a specification is excluded—and that, so, it becomes inevitable as matter of reason that the contract at bar is sanctioned.

"The premises are not entirely sound. In law, the statute law is not wholly silent as to street railways. In the words of *San Antonio Co. vs. City*, 257 Fed. 467, such an act as Sec. 767 Code 1897, 'regulates everything connected with city railroads.' It is significant that this statute provision does not so much as suggest that permanent fares can be fixed. The *San Antonio* case holds that in such circumstances no irrevocable fares can be fixed. \* \* \*

"Whether a five-cent rate is or is not confiscatory must be determined on final hearing below. This appeal but complains of the refusal to enjoin temporarily. The relief on the appeal cannot go beyond that complaint. And we hold that for the reasons we have set forth it was error to dissolve the injunction. *Knoxville Co. vs. City* (C. C. A.), 261 Fed. at 284, and order U. S. District Court, No. District of Iowa Supra.

"We now and hereby reinstate that injunction to the extent of restraining all defendants from interfering with plaintiff's collecting a six-cent fare until final hearing and decision is had and made and with deciding that this must be done because of these reasons, we must stop, except that we must safeguard the rights of both parties so that there shall be 'effectiveness of the final decision.' See *Wehrman vs. Moore*, 177 Iowa, 550. *Town of Williams vs. Company*, 170 N. W. 815. We do this by ordering the plan of trusteeship approved in the *Williams* Case.

"For the reasons stated the cause must be remanded for action in harmony with this opinion, and the order below must be and is reversed."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### VIRGINIA

#### 300—Investment and Return

Chesapeake and Potomac Telephone Company, Application For a General Revision of Rates. Decision of the Virginia Corporation Commission, Fixing Rates. July 23, 1920. (Continued from 17 Rate Research 323-327, 340-343.)

The Chesapeake and Potomac Telephone Company of Virginia through its witness, Mr. G. W. Whittemore, presented a valuation of its property as of December 31, 1917, based largely on the reproduction cost theory, to which was added through its witness, S. P. Grace, the actual amount of money expended as reported on the books between that date and June 30th, 1919.

The Commission says:

#### 311—Basis of Valuation

"The valuation presented by the Company, however, does not follow strictly the reproduction cost theory except as to values in 1917. Such values were arrived at by applying to the quantities of property unit costs averaged as of 1914, 1915 and 1916. No attempt was made to arrive at a reproduction cost based on increases in prices of materials and labor due to war conditions, and it is unnecessary for the Commission to repeat the stand it has taken in several recent decisions declining to arrive at a fair valuation based on reproduction at inflated war values. \* \* \*

"The Commission must in determining the fair value take into consideration all the elements as set forth in the leading case of Smyth vs. Ames and the long line of decisions depending thereon. \* \* \*

"We could easily employ many pages in this opinion in quoting decisions on all angles of this most important question. Many regulatory bodies have adopted the investment cost basis and there are reasons well worthy of serious consideration which lead up to that view.

"The whole purpose of regulation is for the protection of the public

and to so safeguard the utility itself as to allow it to give that service to which the public is entitled. Courts and commissions are very far from being in agreement as to the principles that should be adopted. Instances are known where Commissions have reversed their own previous findings and it is perfectly apparent that no hard and fast rule can be laid down in any particular case. What is found reasonable by a commission in one instance has been disregarded by others as inconclusive or unreasonable. We do not know that either the reproduction or replacement cost less depreciation theory, or the historical or original cost theory predominates.

"It seems to the Commission that a reproduction value as of normal times at pre-war prices, plus the actual sums necessarily expended during the period of inflation, less the deductions discussed above, in a proper view of all the elements, is a fair and reasonable basis.

"We can but realize certain weaknesses in the reproduction cost theory, necessitating, perhaps, re-appraisals when different price levels come about. We have simply done the best thing that appears to the Commission in the light of the extensive investigations we have made and the long and earnest thought we have given to the proposition. \* \* \*

"It is the conclusion of the Commission, therefore, and it is so adjudged, that the fair value of the property of the Chesapeake and Potomac Telephone Company of Virginia for rate-making purposes as of June 30, 1919, is thirteen million, two hundred and twenty-three thousand, nine hundred and twelve dollars and thirty-seven cents (\$13,213,912.37).

### 380—Taxation

As a portion of its operating expenses the Chesapeake and Potomac Telephone Company of Virginia pays annually to the American Telephone & Telegraph Company four and one-half per centum of its gross revenues. It is, of course, well understood that the American Telephone & Telegraph Company is the parent company of the Bell system, owning either directly or indirectly all of the affiliated Bell Companies, including the petitioner.

"In view of the circumstances, the Commission is of the opinion that The Chesapeake and Potomac Telephone Company of Virginia has a contract with the American Telephone and Telegraph Company in this licensee arrangement which is of great value to it and which saves it a large amount of expense which would otherwise be incurred if it attempted to operate independently.

"We cannot, however, agree that a percentage arrangement is a scientific or satisfactory way of determining the amount of compensation. When rates go up as a result of increased wages and cost of material the payment to the parent company goes up in pro-

portion. We believe that the Bell interests should devise some plan of presenting to rate-making bodies greater details of the cost of rendering this service, allocated on some understandable plan.

"We do not, therefore, disallow this item of expense and we withhold definite approval thereof at this time. We cordially concur in the proposal made by the Indiana Public Service Commission in its opinion in its cases numbers 3808, 3935, 4742-4774, 4962, of February 9, 1920, in re Central Union Telephone Company, P U R 1920B, page 813, 'that the entire question of the  $4\frac{1}{2}$  per cent. allowance be submitted to joint study by the American Telephone and Telegraph Company and the National Association of Railway and Utilities Commissioners, acting for the various Commissions of the country, in order that this important question may find uniform solution throughout the country.'"

#### 400—Rate Theory

"In the course of the hearings the Commission decided to make rental rates on the basis of population and stations in each local exchange area, rather than consider all the elements in each community.

"The aim, as pointed out by Mr. Whittemore in his testimony on page 235, is to produce sufficient revenue to permit the Company as a whole to run its business and to apportion the load to the problem.

"It is true that local conditions vary to some extent. In some localities it is doubtless possible to procure labor at a lower cost than in others. A study of the proposition, however, convinces us that under the rate schedule we are providing by the order in this case, the Company will in no locality be able to earn in excess of a fair return on its capital invested therein, supervision and long distance telephone service facilities considered.

"It is a curious fact that most localities in the State seemed to think in these proceedings that a segregation of receipts and expenses and a valuation locally would result in the application of a lower rate in their localities than elsewhere. We are convinced that this conception is erroneous. For instance, there was such a claim from the City of Norfolk, where customers believed that consideration of the Norfolk situation alone would result in a lower rate. On the other hand, it is practically certain that the Company will earn less on its investment in the City of Norfolk on the State-wide theory than in any other locality in Virginia. This is, of course, due to the situation of the moment, as a result of the heavy investment in the automatic system there.

"Again, the City of Newport News, through its attorney, averred that the receipts of the Company for business done therein are more than ~~ample~~ under the existing rates to meet its necessary expenses,

take care of depreciation and give a fair return upon its investment in that city. It is on the other hand practically certain that the Company will earn less on its money in the City of Newport News than it will anywhere in the State except in the City of Norfolk. This is again due to the situation of the moment, and in this instance is due to heavy construction made necessary by war conditions.

"Treating the subject on a State-wide basis, the Commission will at any time be in a position to compel the Company to give the best obtainable service in any locality without an increase in rates. The case of Salem was much discussed in these proceedings.

"In that town the service is thoroughly inadequate, since it is given by an obsolete magneto switchboard. The Commission will in this order require the Company to install at the earliest possible moment after a new franchise has been negotiated between the Town and the Company, the very best modern equipment that can be secured. Between this time and the completion of that installation Salem will be paying a proportionately higher rate for the service it is receiving than the rest of the State. After that time Salem will be paying proportionately less than the rest of the State relative to the investment made. All these conditions are merely temporary.

"There will always be two strong incentives towards giving the best service under this plan. First, it is to the Company's interest to put in modern, improved equipment, because bad equipment means poor service, constant complaints and waste of man-power. Second, the Commission will see to it that the service is made satisfactory.

"The Commission believes that certain of the smaller communities of the State have borne a proportionately heavier burden than the larger communities by reason of the changes made by direction of the Postmaster General. In most cases they have had taken away from them the right to talk free to other exchanges and toll charges have been imposed. At the same time their rental rates were materially increased. The service costs them more, with a greatly contracted area in which they may talk without the payment of tolls. Under the circumstances, the Commission has disallowed the increase asked for by the Company in the following communities: Big Stone Gap, Eastville, Parksley, Pennington Gap, West Point, Fairfax, Dublin, Waverly, Coeburn, Herdon, Pearisburg, Louisa, Cincoteague, Marshall, The Plains, Virginia Beach, Gordonsville, Middleburg, Jonesville, Appalachia, Wise, Lovettsville, Shawsville, Hillsboro and St. Paul.

"This means that in these communities the rates will remain as at present, without any change.

"It is true that the point at which this increase is disallowed is arbitrarily arrived at by the Commission, but it will be generally understood that it is necessary to stop somewhere.

"In fixing this schedule of rates and in allowing in part the increase asked for by the Company, the Commission has kept first in mind its duty to the public. It is essential that public service be maintained and perfected. \* Poor service is the most expensive thing an individual or a community can have. Good service is worth what it reasonably costs. It is manifestly impossible for a utility to survive and give the service demanded by the business and social needs of the community unless it earns sufficient money to pay its operating expenses and to make the proper allowance for depreciation against the time which will certainly arrive when its plant will wear out, and permit it to earn such reasonable return upon the money it has invested, or upon its fair value for the public use, as will justify public investment in its securities and allow it to obtain the necessary finances to build the extensions needed by the advancing interests of the community.

"A publicly regulated monopoly is helpless in times of mounting costs unless it is given relief by the regulating authority. It may be taken for granted that no individual can regret more than the Commission does that living costs have been rising. The manufacturer and the merchant, when prices for raw materials, or supplies, or labor, or rent, go up, simply charges his customer a larger amount. He can do nothing else. The utility cannot do this without the consent of the Commonwealth through its constitutionally appointed agent, the State Corporation Commission."

In conclusion the Commission says:

"By every test, the Company is entitled to an increase in revenues.

"From the public standpoint, it appears that the cost of telephone service has shown far less advance in the last ten years than the general cost of living.

"The Commission will be glad at any time to hear from any community which feels that rather than pay toll charges to some other community with which it is closely associated, it will stand a slight general increase in rental charges so as to equalize the situation. All such situations will be carefully considered and appropriate action taken thereon. \* \* \*

"Although the rate of return under the increases authorized is only 3.37 per cent. on the amount the Commission has decided is a fair value, we believe that with the gradual reduction in realized depreciation and the apparent general improvement in the Company's condition, the earning may reasonably be expected to show some increase.

"Having exhaustively investigated the telephone situation, the Commission is in position to make re-adjustments in future with little

relative effort, and to make reductions in rates when conditions warrant.

"The Commission's accountant, who has specialized for years in utility accounting, testified that the salaries paid head officials of the Chesapeake and Potomac group are by no means excessive.

"The Commission is by no means wedded to the State-wide method of determining rates, and is open to conviction as to desirability of making a change in this method so as to segregate localities.

"The higher rates will no doubt cost the Company some revenue by reason of subscribers changing from single party to two-party service to reduce their telephone expense. No account can now be taken of this, as the amount is speculative.

"As stated in the section of this opinion devoted to local franchises, the Commission has not taken into account losses to the Company's revenue because of binding franchise limitations on rates. If any of the cities and towns in which the limits imposed by franchise cannot be disturbed by the Commission, decline to amend their franchises so that their citizens will pay the amount determined by the Commission to be fair, the Company will stand the loss and its earnings as above analyzed will be thereby lowered. The total loss would be more than \$50,000 per annum. \* \* \*

"We are fully mindful that now, having reached a fair value for rate making purposes of the Company's property in Virginia, the tax returns of this Company need re-adjustment. We shall proceed to bring the assessments up to the proper level at once."

## **CALIFORNIA**

### **781—Adequacy of Service**

Elon Dunlop, et al. v. Diamond Ridge Water Company, Complaints Against Inadequacy of Service. Decision of the California Railroad Commission, Ordering that Adequate Service Be Furnished. June 19, 1920.

Complaints were filed with the Commission against the water service rendered by the Diamond Ridge Water Company for irrigation and domestic use.

This Commission in its Decision No. 1310, in the proceeding entitled Elon Dunlop vs. Diamond Ridge Ditch Company, Case No. 528, decided February 28, 1914, volume 4 of Opinions and Orders of the California Railroad Commission, page 317, directed defendant herein to submit plans for improving and repairing its system. In that proceeding defendant declared that it was the purpose of the company to construct a wholly new impounding and irrigation system, to supersede



the then existing system. This reconstruction has never taken place. Subsequent to Decision No. 1310, *supra*, certain improvements were installed by the company, and it appears from the evidence that the system is now in better condition than at that time. However, certain additional improvements and repairs are necessary in order to properly conserve the available water supply.

Attention is directed to the fact that the income heretofore received by defendant is insufficient even to meet operating expenses, and the tendency is for a company operating with so large an annual deficit to render inadequate service and to neglect necessary repairs.

The Commission says:

"There is now pending before this Commission an application filed by defendant herein, asking authority to increase its rates. The area served, however, is so small that it will undoubtedly be practically impossible to establish a rate which will yield to defendant herein revenue sufficient to meet its expenses and an interest return. Defendant has, however, dedicated its system to a public use, and in reliance upon this dedication its consumers have proceeded to develop their ranches. The evidence shows that no real effort has been made to increase the business from its present system, and I am of the opinion that the poor service rendered has had a very material effect in reducing its business.

"Defendant herein purchased this property as a speculation, intending to finance the purchase of a large tract of land, to be later subdivided and sold at a large profit through the use of the water rights purchased with this system and the construction of impounding facilities. Defendant admitted that it was holding this for a speculation and that its speculative value was considerable. This, however, is no just reason why present consumers should be permitted to suffer for lack of water, and indeed, a farsighted policy would be to render adequate service to these consumers, thereby securing their aid in the larger scheme and inducing others to settle, thus promoting the development which defendant is and has been attempting to finance. Present consumers should, however, be required to pay equitable rates and produce for the utility a sum equal to what the service is reasonably worth.

"Complainants herein submitted a questionnaire to a large number of landowners, including defendant's present consumers, and submitted this questionnaire at the hearing herein, in an attempt to show that if reasonable diligence is used on the part of defendant to deliver an adequate quantity of water, business is readily available and the system can be developed.

"It appears to me that if those signing the questionnaires will actually contract with the defendant so that it will be assured of a reasonable income because of its additional expenditures, defendant

can afford to construct more or less extensive improvements to its system and provide for an additional water supply. I recommend that a definite agreement be drawn to accomplish this end.

"This Commission will gladly use its good offices in furtherance of such a development, which will work for the welfare of the community and the water company. The order herein will provide that an additional water supply be obtained, conditioned upon some such agreement being consummated; and at such time as a sufficient area contracts to use water to provide an adequate income to defendant herein to enable it to construct these additional facilities, a supplemental order will be issued directing defendant to proceed immediately with this construction.

"I further suggest that complainants prepare and sign such contract and submit the same to this Commission, which can then take up the matter with defendant and give consideration to the matter of either arriving at an agreement regarding the additional construction work to be carried on, or issue further order requiring defendant to proceed.

"There is in this vicinity a possibility of all getting together and working out a constructive program which will materially benefit all concerned and be one step towards the development of the entire project which defendant has been trying to put through for a number of years. \* \* \*

"After carefully considering all of the evidence, I am of the opinion that it is feasible to work out some plan whereby water can be impounded and delivered to the locality in question, provided the area is not so scattered that the transportation and delivery cost is prohibitive; and further provided that those desiring to receive water give some adequate assurance to the company, in the form of a contract or otherwise as outlined above, that water will be used in sufficient quantities to justify the expenditure."

## NEW JERSEY

### 630—Cost of Supplies

City Gas Light Company, Application for Authority to Increase Gas Rates. Decision of the New Jersey Board of Public Utility Commissioners, Granting an Increase. July 23, 1920.

On June 14, 1920, the City Gas Light Company, which supplied gas in the city of Ocean City, Cape May County, New Jersey, filed an application for the Board's approval of an increase from \$1.50 to \$2.15 in the rate per thousand cubic feet of gas sold to ordinary metered customers, in addition to the fixed service charges approved by the Board under date of July 15, 1919.

The reason for seeking at the present time an increase in the price for gas is stated in the petition to be the need of additional revenue to meet the increase in expenses during the coming year, especially the extraordinary rise in the cost of fuel and gas oil. According to the testimony given at the hearing in this matter there has already been an increase of \$1.73 per ton in the cost of anthracite coal delivered over the average price thereof in 1919, \$2.22 in the cost of bituminous coal and 7.6c. in the price per gallon of gas oil. The total estimated increase in expenses for the coming year is \$28,051.85.

The Commission says:

"The quantity of coal and oil used by the company in calculating the above increased expenses for these items is ten per cent. greater than the amount actually used in 1919, which possibly may be somewhat too low in view of the fact that there is anticipated an increased output for the coming year of approximately twenty per cent. over 1919. On the other hand, in arriving at the increase in the cost of oil, fifteen cents has been taken as the price per gallon, whereas fourteen cents will probably be nearer the average price for the entire twelve months of the year. This difference would reduce the total estimated increased cost by about \$1,600, or \$218 more than the excess cost of a twenty per cent. increase in the quantity of coal and oil to be consumed over a ten per cent. increase as used in calculating the first three amounts in the above estimate, the sum of which is \$15,240.73. This figure represents the increased cost due to the higher prices per ton and per gallon prevailing at the present time for coal and oil and does not include any allowance for a greater cost at the 1919 prices on account of a larger output. The total cost of all production supplies in 1919 was \$21,878.87. For a twenty per cent. increased output the cost of such materials would have been approximately \$4,000 greater. This amount should be included as one of the items of increase in expenses, and in the following calculation will be substituted for the last named item in the above estimate designated 'emergency,' sufficient details of which are not given in any of the exhibits submitted by the company.

"The item of \$4,126.85 for additional working capital should also be excluded, and only the amount of interest required to be paid on that sum of borrowed money included as a part of the increased expenses for which additional revenue is needed. Interest at six per cent. on \$4,126.85 added to the total interest charges for 1919 will make a total for 1920 of approximately \$12,500.

"Eliminating the \$4,126.85 from the estimate of increased expenses, and making the several other charges indicated in the second preceding paragraph, will give a total of \$25,231.04 as the total amount of increase in operating expenses \* \* \*

"In both the petition of the company and in the testimony taken at

the hearing in this matter it is stated that the company is not seeking at this time an increase in rates to yield a fair return on its invested capital, but only enough additional revenue to meet the increased cost of operation. For this reason the Board in this report does not consider the question of a return on the value of the company's property, but undertakes to determine what is a fair price to be charged for gas during the coming year, taking into account solely the increase in expenses over those of the preceding year."

### CALIFORNIA

#### 224—Rates

Mountain Power Company, Application For Authority to Increase Rates for Water Service. Decision of the California Railroad Commission, Granting an Increase. June 19, 1920.

The Mountain Power Company asks for authority to increase its rates and charges for water service, it being alleged that due to increased operating expenses and the elimination of a large number of fire hydrants by the city of Crescent City the revenue derived from the present rates is insufficient to yield maintenance and operating expenditures and a fair return on the investment. In addition to the establishment of higher rates, applicant asks that a surcharge be established to reimburse it for losses incurred due to the unreasonably low rates heretofore in effect, and it appears that the rates at present in effect were established at the beginning of the company's operation. At present there are 14 metered services and 204 flat rate services, the larger users such as hotel, etc., having metered service.

At the beginning of the company's operations there was a hydrant rental agreement in effect between the municipality and the company, but this arrangement has been a source of much contention and has been changed from time to time. This agreement provided for a payment of \$201 per month for 67 hydrants. Later a dispute arose which was compromised by the city agreeing to pay \$150 per month for hydrant rental and 20 cents per 1,000 gallons for water used for street sprinkling. In October, 1918, the city trustees, by a resolution, eliminating 33 hydrants and proposed to pay \$76.16 per month for the remaining 34 hydrants, which is the same rate per hydrant as was previously paid for the 67. The company has refused to accept payment on this basis and has brought suit to recover the amount which it claims is due.

Mr. Owen, president of the water company, testifying in its behalf, stated that the company was urged to install facilities that would insure adequate fire protection.

The Commission says:

"In line with this policy the company installed larger mains than were necessary to deliver an adequate supply to its other consumers. If

any consumer (and the municipality in this instance is a consumer) desires special facilities for the delivery of water, such as pipes of sufficient size so that a comparatively large quantity of water can be concentrated at one point at any time, that consumer must expect to pay the cost of rendering the service. It would be unfair to the other consumers of the company to burden them with the expenditure made for service such as is asked for by the municipality. I am of the opinion that the rate which was originally in effect, namely, \$200 per month for 67 hydrants, is fair, and that at least this sum should be produced each month for the municipal service rendered and the expense incurred because of the installation of fire fighting facilities.

"In regard to applicant's request that a surcharge be established to reimburse it for losses sustained due to unreasonably low rates during the pendency of this application: Although there may be instances where such a procedure is warranted, we do not find that this is such a case, inasmuch as applicant has at all times had recourse to this Commission and could have at any previous time applied for relief and asked for authority to increase its rates. \* \* \*

"The schedule of rates established in the following order is designed to produce the annual charges estimated. It will also be noted that the fire hydrant rental is increased. Inasmuch as all consumers derive a material benefit from the maintenance of fire hydrant service, it seems fair and reasonable that they should bear a fair proportion of the cost of such service."

## WISCONSIN

### 616.1—Street Lighting

Oconto Electric Company, Application for Authority to Increase Its Rates For Street Lighting. Decision of the Wisconsin Railroad Commission, Fixing Rates. July 26, 1920.

An application was filed on October 22, 1919, by the Oconto Electric Company and alleges among other things that on account of the installation of a new type of street lighting system the costs of service have so arisen as to make a rate of \$60.00 per lamp per year necessary to carry on the business properly.

The street lighting in Oconto has been the subject for many years of a bitter and protracted controversy. The matter has been before the Commission and in the courts a number of times and to review the entire history here would be of no advantage. That portion of it, however, which appears to bear on this case will be briefly given.

Two electric companies, the Oconto Electric Company and the Oconto Service Company, have been for some time doing business in Oconto. Prior to December 10, 1918, the street lighting was performed by the Oconto Service Company, but in a decision on November 6, 1918, by

the Supreme Court of this state it was decided that the contracts under which this service was given was invalid and that the Oconto Electric Company held the valid contract. The Company then furnishing this lighting was required to terminate this service and the petitioner was authorized to take it up. This was done on December 10, 1918. The system for street lighting which was owned by the Service Company consisting of 320 watt magnetite arc lamps with the overhead wiring and the necessary station appertenances was sold in part and rented in part to the Electric Company in accordance with an agreement entered into at a hearing with the Commission on December 5, 1918.

Subsequently on February 5, 1919, a new contract was entered into between the Oconto Electric Company and the city, the one then in effect expiring August 7, 1919, whereby a new type of lamp was to be installed of either 400 candle power or 600 candle power at the option of the city and the price to be paid was (in the words of the contract) "such sum per light per annum \* \* \* as fixed by the Wisconsin Railroad Commission." At that time the rate per lamp per year for the magnetite arcs was \$30.00 by contract, and in a decision No. U661 by the Commission dated September 18, 1918, an increase was authorized on the expiration of the old contract August 7, 1919, placing the rate at \$40.00 per lamp per year. This is the rate being charged at present.

#### **224.5—Rates Fixed by Contract**

A question as to the interpretation of the clause in the present contract relating to the rate to be paid for service has arisen, the city claiming that the rate as understood by them was the rate fixed by the Commission case No. U661 while the petitioner believes differently.

The Commission says:

"This question is, of course, a judicial one and beyond the powers of the Commission to decide. However, the Commission clearly has authority under the law to amend contracts, rates for service, and, in this case, it is believed that the sole function of the Commission is to determine a rate for the lighting which is consistent with the costs and value of the service rendered.

"The contract at present in effect provides for the installation of both 400 candle power and 600 candle power lamps. Although at present only the larger size has been used, it is evident that the city may designate which sizes and how many of each it shall use. The Commission will, therefore, fix rates for both lamps."

#### **616.1—Street Lighting**

"In determining the rates to be charged, the investment useful for street lighting purposes will be considered in taking over the street lighting system, the petitioner paid \$4,201.00 to the Service Company for the lines and poles used exclusively in street lighting. In addition to this some property, including the magnetic arc lamps, was rented. The rented property has been turned back to the service

company. Relative to the present Hazds system the company presents an exhibit showing that the cost in addition to the purchased property for 78 lamps is \$3,413.03. The total cost, therefore, of the street lighting property is \$7,614.00. \* \* \*

"The Electric Company claims that in addition to the actual lighting equipment a portion of its power plant should be considered as charged to street lighting. A large part of the energy used by the Electric Company is now purchased from the Service Company. However, the steam plant of the Electric Company is operated over the peak of the load and for a part of that time at least the street lights are burning.

"If the plant cost is apportionable to street lighting on a demand basis the amount would be \$24.52 per lamp for 600 C.P. lamps and \$17.49 for 400 C.P. lamps. If it could be shown that on taking over the street lighting no addition of plant capacity were necessary, some weight might be given to the argument, that the plant charges should not be borne by the street lighting. However, as it has become necessary for the company to provide increased capacity to carry the load, it is evident that such an apportionment is reasonable and proper. \* \* \*

"As a percentage allowance on the investment providing for taxes, depreciation and return, exclusive of lamp and glassware renewals, we believe that 15% is ample, provided the depreciation is set up on a sinking fund basis and that proper accounting methods in the holding of this reserve are observed.

"The fixed cost on this basis would then be \$18.51 for 600 c.p. lamps and \$17.49 for 400 c.p. lamps. \* \* \*

"The summary of the costs of the street lighting as computed by the company and the city together with the amounts used by the Commission is given in tabulated form.

"We do not believe that the costs as determined above by the Commission are unreasonably high. Considering the rather high investment in equipment per lamp together with high costs of labor and materials a higher rate was to be expected. This has, however, been offset materially by a lower energy cost. It is our opinion that the charges found above are equitable and they will, therefore, be authorized.

"It is therefore ordered, That the Oconto Electric Company be and hereby is authorized to charge the following rates for the present street lighting service:

600 c.p. lamps, \$54.00 per year  
400 c.p. lamps, 46.00 per year

"These rates may be placed in effect for service on and after August 1, 1920.

## REFERENCES

## RATES

## 623—Power Factor

Establishing Simple Basis for Rates, by Ray H. Wolford. Electrical World, p. 382. 2 pages.

The recent tendency of central stations to take into consideration the power factor of their customers' loads in making rates has brought about the need of some means for arriving at a figure which could be used in such rates and which would represent the condition of a customer's load as regards the ratio of actual to apparent power.\* \* \*

Several methods have been developed to measure the power factor of loads, chief among which are the methods of measuring the reactive or wattless component of the load and computing the power factor from the readings of the watt-hour and reactive-component meters. The power factor which such methods give is the weighted average power-factor of the load over the period measured.

There appears to be a well-defined opinion existing in the industry that the power factor which is really wanted is the power factor at the time of the maximum demand of the load, since the general practice is to correct the measured maximum demand in terms of kilowatts to a basis of maximum demand in terms of kilovolt-amperes by means of the measured power-factor figure. This method requires the use of several mathematical calculations, which render the method somewhat unsatisfactory from the customer's standpoint.

The writer describes a method of measuring the kilovolt-ampere-hours, or apparent power, and the maximum demand kilovolt-amperes in a polyphase circuit to the degree of commercial accuracy by use of a three-phase, four-wire, three-current-coil, polyphase watt-hour meter, which registers the integrated value of the apparent power. The maximum demand in terms of apparent power is obtained by the use of any of the ordinary block-interval demand meters on the market, controlled by the usual contract-making devices, or by being built directly in the integrating meter. \* \* \*

An interesting point in the method is that in no case can the meter record in excess of the apparent power value, whatever error there is being negative. This feature is considered to be an advantage, as there is no chance of the error operating to the advantage of the customer.

A preliminary analysis of the power-factor conditions of the load by means of a graphic-power-factor meter should enable the selection of a power-factor range best suited to the load and determine the nature of the calibration of the meter to measure the apparent power with a good degree of accuracy.

## PUBLIC SERVICE REGULATION

## 253—Commission Reports of Decisions

Illinois Public Utilities Commission. Opinions and Orders. Volume VI 1919. 1228 pages.

The Public Utilities Commission of the State of Illinois has published in bound form its sixth annual report of Opinions and Orders for the year ending September 30, 1919.



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September 9, 1920

No. 24

# RATE RESEARCH



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## Rate Research

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# Rate Research

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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## RATES

### ROME, NEW YORK

#### 720—Rate Schedules

Rome Gas, Electric Light & Power Company, Rome, New York (Pop. 25,100). Gas Rates Effective August 1, 1920.

The Rome Gas, Electric Light and Power Company has the following rate, effective August 1, 1920, for gas service for lighting, fuel and industrial purposes:

#### Rate

##### Customer Charge

\$4.80 per meter per year, payable monthly.

Plus a Charge for Gas Consumed, of

\$1.60 per 1,000 cubic feet for the first 5,000 cubic feet consumed per month.

\$1.50 per 1,000 cubic feet for the next 5,000 cubic feet consumed per month.

\$1.40 per 1,000 cubic feet for the next 15,000 cubic feet consumed per month.

\$1.30 per 1,000 cubic feet for the next 25,000 cubic feet consumed per month.

\$1.20 per 1,000 cubic feet for the next 50,000 cubic feet consumed per month.

\$1.15 per 1,000 cubic feet for the next 100,000 cubic feet consumed per month.

\$1.05 per 1,000 cubic feet for the next 200,000 cubic feet consumed per month.

\$1.00 per 1,000 cubic feet for the next 200,000 cubic feet consumed per month.

.95 per 1,000 cubic feet for excess consumption.

#### Coal Clause

On rate for portion of consumption in excess of 600,000 cubic feet per month, 1 cent per 1,000 cubic feet is added for each 10 cent increase in cost of gas coal above \$7.50 per net ton in Company's storage.

#### Delayed Payment Penalty

10 cents per 1,000 cubic feet will be added, if bill is not paid on or before the tenth day of the month following that in which service was rendered.

**COMMISSION DECISIONS****PENNSYLVANIA****310—Valuation**

Borough of Kane, et al. v. Spring Water Company of Kane, Rehearing of Complaint Against Rules for Water Service. Decision of the Pennsylvania Public Service Commission, Modifying Its Former Order. June 21, 1920.

The Spring Water Company of Kane applied to the Commission for a rehearing of the Commission's order of February 17, 1919.

Reviewing the various elements heretofore considered in evaluating respondent's property, the Commission upon due consideration of all facts and circumstances now presented has reached the conclusion that a sufficient allowance was not made for certain elements of value in respondent's plant. The Commission says:

"In the light of changed conditions and the testimony introduced on this rehearing it appears that the valuation of \$200,000.00 heretofore placed on respondent's property is too low. The original cost of the real estate and water rights was \$13,202.50 instead of \$10,850.00 as determined by the original report. There was paid for attorney fees in defending an action of ejectment \$1,500.00, but the Commission allowed only \$300.00 of this amount under the impression that this was all that was properly chargeable against the real estate acquired by the respondent. The evidence now clearly establishes that the entire sum of \$1,500.00 should have been allowed. The contention that the Commission erred, except as above indicated, in its reproduction estimate of the cost of the respondent's real estate and water rights cannot be sustained."

**311.2—Reproduction Cost New**

"In a reproduction estimate the question is what would it cost to acquire the land with its prospective value for the purposes for which it is purchased. It is the land and the apparent springs and streams on it with their certainties and uncertainties as to yield and quality that is acquired and to be valued. The developed and proven supplies constitute an element of value over and above the original cost of the land and appurtenant rights or their cost in the undeveloped state. This additional element of value is not to be included in the reproduction estimate, but should be considered in determining fair value. The Commission in its original report refers to this element of value and states that it will be taken into consideration in determining the fair value of the property; also that due consideration would be given to the respondent's plant with the business attached and an allowance made for going concern value." \* \* \*

"We cannot accept the respondent's contention that the Commission in weighing the evidence and reaching its conclusions must adopt as its judgment the opinion of experts called by the parties to express their views on these matters. These opinions may be helpful in reaching a conclusion, but they are not obligatory on the Commission whose right and duty is to apply to all the facts and circumstances in evidence, including the opinions of these experts, its own knowledge acquired by observation and experience in arriving at what it deems a fair and just allowance for these elements of value. Considering the original and reproduction cost new less depreciation, and all other elements of value connected with the respondent's plant it is now ascertained and determined that the fair value of the used and useful property, as of June 30, 1917, for rate making purposes, is \$230,000.00."

### 352—Expenses

"The estimated allowance for operating expenses as contained in the original report failed to meet the actual expenditures made as shown by the evidence. \* \* \*

"The items most seriously questioned in this estimated expense account for 1920 are those relating to taxes; the amount claimed for directors' and officers' salaries and the allowance claimed for the expenses of this rate litigation. Without intending to be understood as establishing a precedent for allowing such expenses in whole or in part, the facts and circumstances in this case disclose an equitable situation that constrains the Commission to allow a portion of them and it has fixed the amount that will be allowed at \$4,000.00 to be amortized over a period of five years. Taking into consideration the increased rates for natural gas to operate the plant, and eliminating from this expense account the taxes for which no allowance can be made, the reduction in executive salaries and in the amount claimed on account of the expenses incurred in this litigation, the Commission has determined that there should be allowed for annual operating expenses the sum of \$20,500.00 instead of the \$15,000.00 provided for this purpose in the original report."

### 360—Depreciation

"The Commission heretofore fixed the annual depreciation at \$1,708.11, which figure appears to have been the result of the application of a percentage allowance to the wrong base figure. This should be corrected in accordance with the fair value of the property as hereby determined, and the amount fixed at \$2,100.00 instead of \$1,708.11. \* \* \*

"The original report as changed or modified by this report is adopted as evidencing the findings and determinations of the Commission. The complaint against the respondent's present schedule of rates is

sustained and it will be required to file, to become effective on one day's notice, a schedule of rates and charges that will produce the revenue to which it is entitled as determined by this report; said schedule to be filed within thirty days after the service of this order upon it."

#### **340—Rate of Return**

In a separate report on the rehearing granted the Spring Water Company of Kane, Commissioner Rillings says:

"We are in accord with the conclusions reached by the Commission in its report on the rehearing granted in this case, save that we are of the opinion that on account of existing conditions a seven per cent rate of return to the owners of public utilities does not meet the standard contemplated by the provisions of the Public Service Company Law.

"An investment made in a public utility as compared with other investments, is surrounded by conditions that set it apart in a class by itself. The property resulting from such investment is applied to public use and when so accepted, mutual duties and obligations arise. By reason of its location, it becomes an integral part of the community served and can not without the consent of the State discontinue service, neither (save for a small scrap value) can it be removed. It is irretrievably committed to the community it serves and its destiny is bound up therewith, advancing or receding as the community itself progresses or retrogrades. It is denied speculative profits, and is made subject to all the risks incident to public utility service. Its restricted return is not always forthcoming as opportunity is afforded to accept less or no return at all. The support of the public is not guaranteed as only convenience and necessity result in patronage. It is required to keep its property in an efficient condition and meet the increasing needs of the community it serves, and in making needed extensions it requires additional capital. Every utility must contemplate a growth and new capital is a factor which every utility is bound to consider.

"It is common knowledge that at the present time many opportunities are afforded for conservative eight per cent. investments, and in order to obtain needed capital the cost to the owner of the utility, both in the rate of interest to be paid and other respects, is greater than formerly. It is obvious that if an eight per cent. return is assured with a greater degree of safety in other lines than is afforded in a public utility no money will be invested in utility properties.

"Certain public utilities desiring additional capital have recently issued bonds at seven per cent and the nature and character of the security offered was most desirable. It naturally follows that if a loan can be made in which the interest return of seven per cent is

secured and the payment of the principal at the end of the term fixed for the loan assured, money will not assume all the risk of a utility investment with only a like return. With the purchasing power of the dollar depreciated as at present, a seven per cent return means a greatly reduced income to all owners of utilities. By reason of existing conditions, except where needed to protect existing investments, little or no money is now being invested in utility properties. Such a condition is unfortunate and eventually will result in injury to the public, as its welfare and convenience are not promoted by any retrogression in utility matters. No greater harm can come to the many municipalities of our state than will result from the general withdrawal of investing capital from public utilities. The interests of the utility and the community served are so intimately connected that to assist one is to help the other, and to injure either will harm both. It should also be borne in mind that whatever determination may be made as to the proper rate of return, in the final analysis the question whether or not capital will invest itself rests with the owner and the conditions he prescribes must be met or the capital will not be forthcoming.

"The guiding star of the Commission in reaching its conclusions in this respect is the public welfare, and in no manner can the public interest be better served than by the adoption of a policy which will result in financially strong and efficiently constructed public utilities in order that they may render adequate service for a reasonable rate. This can only be effected by the payment on the fair value of the used and useful property dedicated to public service of a fair return as contemplated by law, which we think under existing conditions should not be less than eight per cent. A poorly paid public utility can not render efficient service any more than the poorly nourished man or horse. Both should be maintained and kept in such condition that they may render the service expected of them.

"It may not be necessary in every instance to grant an eight per cent return. As a general rule, however, we are of the opinion that under existing conditions the best interests of the public will be served if the fair return allowed utilities is fixed at eight per cent. This statement is made, of course, having in mind that the affairs of public utilities will be honestly and economically managed and good service rendered, and that the return be paid upon a fair value of the property dedicated to public use. The public do not object to paying a fair rate when good service is rendered. Objection is generally made when inadequate service is rendered or when a utility is inefficient or seeks to collect a return on an inflated value.

"Many utilities have paid or are now paying the penalty of an excessive capitalization. No more baneful policy can be adopted by a utility than to burden itself with a bond issue greater than it should bear. The practice of such a policy has done much to create preju-

dice on the part of the public towards utilities and thereby prevent the allowance of a fair return being paid."

### CALIFORNIA

#### 226.6—Abandonment of Service

Santa Maria Gas Company, Application For Authority to Abandon Certain Gas Service. Decision of the California Railroad Commission. Granting the Application. June 19, 1920.

This is an application by Santa Maria Gas Company, a corporation organized to purchase and acquire the gas properties of the Midland Counties Public Service Corporation and the Santa Maria Gas and Power Company, seeking authority to abandon gas service on a certain portion of the eight-inch natural gas transmission line to be purchased from the Midland Counties Public Service Corporation. It is proposed to remove that portion of said line between Betteravia Junction, Santa Barbara County, and the Avila refinery of the Union Oil Company in San Luis Obispo County.

That portion of the Midland Counties Public Service Corporation's eight-inch line, for which permission is being asked to abandon, is providing service to a total of fifteen consumers. During the year 1919 these patrons used 435,300 cubic feet of gas for which they paid \$225.70, and during the first four months of 1920 they used 292,500 cubic feet at a cost of \$146.84, at the rate of 50 cents per thousand cubic feet. The length of line which it is proposed to remove is 120,000 feet, or nearly twenty-three miles. The salvage value of this pipe is \$108,000 and may be considered as a minimum basis of investment when determining the cost of service. The sales to consumers along this line, based upon the experience of the first four months of 1920, indicate a total for the year of 877,500 cubic feet. Operating expenses, including an allowance for depreciation and return upon the investment, would amount to \$16,040.

If this amount were to be paid in rates by consumers along the line, the average rate would be \$18.30 per thousand cubic feet. On the other hand, if a rate of \$1.50 per thousand feet were established, there would remain a deficit of \$14,725 to be absorbed by the remainder of the Santa Maria Gas Company's consumers.

The Commission says:

"It is, therefore, apparent that the continued operation of this eight-inch line, which has no useful purpose except to supply these fifteen consumers, can not, in itself, provide any return upon the investment, and, if maintained, would place an unfair burden upon the balance of the system, to whose service it is entirely unnecessary. If maintained in service, this line constitutes a duplication of facilities not required by the consolidated company.



"The serving of domestic consumers from a high pressure gas transmission line has never been recognized as good practice, and such service was assumed in this case largely to obtain right of way grants. Inasmuch as the consumers receiving gas service from this line are located in an extremely sparsely settled farming community, which does not enjoy other benefits which can be expected only in more closely populated localities, and because the continuance of operation of this line would either require the charging of exorbitant rates, or put an unjust burden upon other consumers of the company, it is believed this incidental domestic gas service is unwarranted.

"The fifteen consumers now receiving gas from this eight-inch line have incurred considerable expense in installing piping and gas appliances. As the discontinuance of gas service to them would render all their gas equipment valueless, they should, therefore, be reimbursed to the extent of the reasonable value of their gas equipment upon the discontinuance of this service."

### **ARKANSAS**

#### **224.5—Rates Fixed by Contract**

Clear Creek Oil and Gas Company v. Fort Smith Spelter Company, et al. Application For Authority to Increase Natural Gas Rates Fixed by Contract. Decision of the Arkansas Corporation Commission, Granting an Increase. July 6, 1920.

The Clear Creek Oil and Gas Company filed with the Commission a schedule of rates in which the rate per 1,000 cubic feet of gas furnished to smelters was increased. The Company alleged that said rates are an injustice to the public in that they stifle the development of the field and the production of gas, and prevent the public from having the benefit of a larger production of gas in the Williams field as fuel in the factories and industries of Fort Smith and Van Buren.

Wherefore, petitioner prayed that the Commission establish and enforce a rate for smelters to pay for the use of natural gas produced by the petitioner. It alleged that 10 cents per 1,000 cubic feet was the lowest rate which would be reasonable; that in time it will be required not only to do additional drilling but to install compressor stations at great expense to deliver the gas to the industries, and when the additional expenses are incurred, it will be necessary, in order to meet the increased cost thereof, to increase the rate over 10 cents per 1,000 cubic feet. Petitioner further prayed that after fixing the rate, the Commission obtain jurisdiction so that it may adjust it from time to time and make it reasonable and compensatory and adequate to serve the public necessities, and to make it adequate to meet the increased cost of production of gas and to enable the petitioner to receive some profit from its investment.

The Fort Smith Spelter Company and the Arkansas Zinc & Smelting Corporation filed an answer in which they denied practically all of the allegations of the petitioner. They admitted that the rate of 8 cents would be unjust, but not for the reason given by the petitioner; that it would not be less than the cost of production, and would not lead to bankruptcy of the petitioner, and is not unjust from the further fact that it enables the respondents to make excessive profits upon its investment without enabling the petitioner to make any return upon its investment; that it will not ultimately cause the petitioner to lose all the money which it has invested in the natural gas industry.

The answer dealt largely with the terms of the contract between the petitioner and respondents, and their position is that the relation of the parties was such that, at the time of the execution of said contract, that said contract was purely private in its nature and was not subject to any regulation whatsoever.

Respondent prayed that the petition be dismissed.

The Commission says:

"We have here presented the question, is the Clear Creek Oil & Gas Company a public utility? Second, the question is presented, was the Clear Creek Oil & Gas Company a public utility at the time the contracts were entered into with the smelters? Third, could a contract, made by the petitioner and the smelters, even though both or either might have been of the opinion that the business was not subject to regulation of the state, be set aside for the public good by the state, acting through properly delegated authority of its police power?

"After an exhaustive research and study of all of the authorities cited by counsel for both sides, the Commission has arrived at the conclusion and finds that the Clear Creek Oil & Gas Company is in fact a public service corporation. In answer to the second question, was the Clear Creek Oil & Gas Company a public utility at the time the contracts were entered into with the smelters, the Commission concludes that for the purposes of this case, it is immaterial. The operators of the company and the owners of the smelters were dealing with a subject-matter imbued with public interest, and the legislature of the state, in Act 571, has said that: 'The jurisdiction of the Commission is extended to and includes (b) \* \* \* pipe line companies for the transportation of oil, gas and water. (c) All gas companies \* \* \* furnishing gas \* \* \* for lighting, heating or power purposes.'

"In answer to the third question, could a contract made by the petitioner and the smelters, even though both or either might have been of the opinion that the business was not subject to the regulation of the state, be set aside for the public good by the state, acting through properly delegated authority of its police power, the Commission con-

cludes that it can. As was said by Justice Hoke of the North Carolina supreme court, in case of *Re Southern Public Utilities Company* —N C —, P U R 1920C, 907, 101 S E 619.

'The power of the legislature, either directly or through appropriate governmental agencies, to establish reasonable regulations for public service corporations in matters affecting the public interests, is now universally recognized, and the principle has been approved with us in well-considered decisions dealing directly with the question. *Atlantic Coast Line R Co. v. Goldsboro*, 155 N C 356, 71 S E 514, affirmed on writ of error to Supreme Court of United States, 232 U S pp. 548-558, 34 Sup Ct Rep 364, 58 L ed. 721; *Corporation Commission v. Seaboard Air Line R Co.* 137 N C 1, 49 S E 191.'

"The Clear Creek Oil & Gas Company having devoted its property to the public and having operated and maintained a pipe line along and under the public highways and streets of cities and towns by the consent of the county authorities and the municipal authorities under an act of the legislature authorizing same is subject to the police power, as was said by Associate Justice McKenna, in *Mutual Loan Co. v. Martell*, 222 U S 225, 32 Sup Ct Rep 74, 56 L ed. 175, Ann. Cas. 1913B, 529, 'to be but another name for the power of Government,' and where this has been properly exerted in reference to those companies, the proprietary rights of individual ownership must, to that extent, be subordinated to the public welfare. (Citing cases.) \* \* \*

"It is not denied by the respondents, or any one else, that the Clear Creek Oil & Gas Company is engaged in furnishing and distributing gas and has obtained authority from the city and from the county court to lay down and maintain pipes. The legislature having said that the Clear Creek Oil & Gas Company is engaged in such a business, as is subject to the regulation of the state, it says in sec. 8 of the Act that the Commission shall have the power, after reasonable notice and after full and complete hearing, to enforce, originate, establish, modify, change, adjust, and promulgate tariffs, rates, joint rates, tolls, and schedules for all public service corporations; and whenever the Commission shall, after notice and hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of the law, the Commission shall, by an order fix reasonable rates, joint rates, tariffs, tolls, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of any of the provisions of this law.

"From the language of the statute, it is plainly evident that power to fix rates that are just and reasonable extend to an increase as well as a lowering of the rates. \* \* \*

"There is nothing in the Constitution of the state of Arkansas that prohibits the legislature from delegating this power, therefore, this Commission must conclude that the legislature acted within the scope of its power when it delegated, by Act 571, authority and supervision over public service utilities to the Corporation Commission. The will of the legislature, as expressed in the act, is that the Commission shall fix just and reasonable rates, and shall have general supervision over the service of public service companies.

"The case of the Clarksburg Light & Heat Co. v. Public Service Commission, just recently decided by the West Virginia court of appeals—W Va—P U R 1920 A, 639, 100 S E 551, is a case very similar to the one we have before us. In that case, the petitioner contended that the Public Service Commission of West Virginia had no authority to regulate the rates to be charged by it to its manufacturing consumers. It contended, as the respondents herein contend relative to the Clear Creek Oil & Gas Company, that it was not a public service that was being rendered manufactories and that it was not subject to the regulatory powers of the state. It was contended that the legislature did not have the power to make of it a public service corporation or to make any part of its business subject to the regulation of the Commission. In discussing this question, the West Virginia court said: \* \* \*

" 'If the petitioner was allowed to conduct one-half of its business under public regulation, and to sell the other half of its product upon private contract, the result would be disastrous to the public, for the rates charged to private consumers would control those charged to the public consumers, or vice versa. The intricate accounts which would have to be kept in order to indicate the proper part of the company's expenses chargeable to the one or the other part of its business would be so easily manipulated that in the end the so-called private consumers would either be paying largely for the public service, or the public consumers would in a large measure be paying for the gas furnished for manufacturing purpose. No one can serve two masters is as true to-day as it was 2,000 years ago, and it cannot be doubted that, if this petitioner is allowed to divide its allegiance in the manner desired, the service rendered by it cannot be doubted that, if this petitioner is allowed to divide its allegiance in the manner desired, the service rendered by it to the class of its patrons, which it would soon despise, would be inefficient and ineffective to meet their reasonable demands, to the end that the needs of that other class of patrons, which had secured its favor, might be the more efficiently met. We are clearly of the opinion that, so long as the petitioner is engaged in supplying gas to the public in the manner in which it is at this time, it cannot supply a part of that public under private contract, and a part of it under public regulation.'

"This decision of the West Virginia supreme court of appeals is de-

cisive of the case now before the Commission. The Commission, therefore, concludes that it has jurisdiction over the subject-matter and that it is its duty to fix rates that are just and reasonable."

## REFERENCES

### INVESTMENT AND RETURN

#### 310—Valuation

Danger in Valuations at Present-Day Figures. *Electrical World*, Editorial. August 21, 1920. p. 366. 1/3 page.

Attempts for rate-making purposes to value at present-day prices, physical properties wholly or almost wholly constructed during the low-price periods before the war, are likely to be the means of expending valuable energy that will not accomplish results and may produce bad feeling against utilities.

"The remedy for increased operating costs must to some extent be increased economies, though under existing conditions the chief remedy must be increased rates. Increased construction costs affect not only additions but also replacements of existing property that must be made through depreciation accounts.

"Increases in rates due to increased operating costs bear no relation to investment, and must therefore be justified on operating facts alone. Fixed charges which are determined by investment in the business can be taken care of in two ways; one by arbitrarily increasing valuation figures to a point where certain fixed percentages will provide the necessary returns, the other by permitting investments to stand at whatever figures the records of construction costs justify and increasing fixed-charge percentages to meet conditions. Any rule must work both ways, and it must be assumed that if properties are valued at costs during high-price periods they must be similarly valued during low-cost periods. The second method has the advantage of justification on the basis of figures that are prevalent in the market and which cannot be a matter of opinion.

"The weakness that exists in many cases, however, is the inability of utilities to prove what their properties have actually cost because construction records have been so carelessly kept that obvious errors destroy confidence in them. The remedy for such a condition is reform in the methods of keeping construction records. The sooner utilities face the fact that returns calculated on investment and varied to meet the conditions at any particular time are the surest way to obtain the necessary results, the easier the solution will be."

### COURT DECISION REFERENCES

#### 112—Franchises

Greensburg Water Co. v. Lewis et al., Public Service Commission. Decision of the Supreme Court of Indiana. July 7, 1920. 128 North-eastern 103.

This action was brought by appellant in the Decatur circuit court under the provisions of section 78 of an act concerning public utilities, creating a Public Service Commission, abolishing the Railroad Commission of Indiana, and conferring the powers of the Railroad Commission on the Public Service

Commission, approved March 4, 1913. Acts 1913, p. 167 (Burns' 1914, sec. 10052z2). The relief which appellant sought to obtain was a judgment setting aside an order of the Public Service Commission of Indiana entered on April 23, 1920, on the ground that such order of the commission was unlawful, in that it was made without authority of law and was violative of the constitutional rights of appellant.

By an act approved March 14, 1919, the General Assembly of the state amended an act approved March 9, 1915 (Laws 1915, c. 137), which amended section 112 of the act first cited in this opinion. The last amendment inserted a new provision into this section. The part of such new provision which is material to this controversy is as follows:

*"And it shall be the duty of any utility operating under any franchise, stipulating for free service or service at special rates to a municipality, or any institution or agency of such municipality, to furnish such free service or service at special rates and it shall be the duty of any utility which has surrendered a franchise stipulating for such free service or service at special rates and received in lieu thereof an indeterminate permit under the provisions of this act, to furnish such free service or service at special rates until such time as the franchise would have expired had it not been surrendered. Act 1919, p. 709."*

The complaint alleges that on July 8, 1919, the city of Greensburg petitioned the Public Service Commission of Indiana for an order requiring appellant to furnish water service to said city, the public schools, and public drinking fountains at the rate of charges specified in the franchise of date December 22, 1902, for the duration of said franchise, as provided by the act of the Legislature of Indiana approved March 14, 1919, and that such proceedings were had on such petition as resulted in a final order issued and promulgated by the commission.

Appellant alleges, in substance, that the italicized portion of the act quoted, on which such order is based, is void, for the reason that its enforcement would violate article 1, sec. 10, of the Constitution of the United States, and also section 24, art. 1, of the Constitution of the state of Indiana. It is alleged that its enforcement would impair the obligations of contract entered into between appellant and the state of Indiana at the time the appellant surrendered its franchise to the state in lieu of an indeterminate permit which it received at the time by operation of law. It is alleged, in substance, that by the terms of this contract appellant released to the state all rights and privileges by it acquired under the franchise agreement with the city of Greensburg, and agreed to operate under the indeterminate permit received by operation of law; that it further agreed that the city of Greensburg should have the right to purchase its property at a value and under terms and conditions to be fixed by the Public Service Commission Act; that it further agreed to waive the right to have the question of the necessity for the purchase of its property by the city tried and determined by a jury, which right it had under the provisions of section 104 of said act; and that, in consideration of the foregoing agreements made and the obligations thereby assumed by appellant, the state released and relieved appellant of all the obligations and duties imposed on it under and by virtue of the terms and conditions of the franchise agreement under which it had previously operated.

The Supreme Court says:

"It has been necessary to set out quite fully material facts alleged in the complaint in order to disclose the precise question presented for decision. It is apparent from the face of the order made by the commission that it was not acting in pursuance of the provisions of the act giving power to fix just and reasonable rates for service after notice and hearing, but that the order was made in the exercise of a supposed power conferred on the board by

the italicized portion of the statute heretofore quoted. If that portion of the act is clearly violative of the constitutional provisions pointed out by appellant, the order must be set aside; otherwise it must be upheld.

"Assuming that the city of Greensburg, at the time the franchise was granted, possessed the delegated power to contract with the water company as to rates of service, then it must follow that the franchise granted by the city and accepted by the company constituted a contract binding on both parties as to all terms and provisions. In making the contract under such circumstances the city acted as an agency of the state under delegated authority, and the terms of such contract became binding on the state as well as on appellant. Neither the water company nor the state would have power to modify said contract or to abrogate it in whole or in part without the consent of the other contracting party; but the contracting parties—the state on one side and the water company on the other—might, by contract, each release the other from the obligations of the contract and thus abrogate it in its entirety as to both parties. *Central Union Tel. Co. v. Indianapolis Tel. Co.* 126 N E 628, and cases there cited. The act by which such a rescission or abrogation is accomplished involves all of the essential elements of a contract. The parties to be affected must have legal capacity to contract, there must be a meeting and agreement of the minds as to the terms, and there must be a consideration. *Bishop on Contracts* (2d Ed.)-Sec. 812, 813. It has been held that the relinquishment by both parties of their respective rights under the contract is a sufficient consideration to support an agreement by each party to absolve the other from all obligations imposed by the contract; or, as more frequently stated, the mutual release from the obligations of the old contract is an adequate consideration for the rescission. *Kelly v. Bliss* (1882) 54 Wis. 187, 11 N W 488; *Flegal v. Hoover* (1893) 156 Pa. 276; 27 Atl. 162; *Sargeant v. Robertson* (1896) 17 Ind. App. 411, 46 N E 925. The unmaking of a contract is within the power which made it. Its unmaking is accomplished by the same means by which it was made, and when accomplished it is equally effectual. All parties are fully and finally released from the obligations of the abrogated contract, and neither party can restore it in whole or in part without the consent of the other.

"By sections 101 and 102 of the act first cited, the state of Indiana made a proposal to the public utilities of the state operating under franchise contracts then existing. By the sections cited the state proposed that any such utility might surrender its franchise contract to the state and be released from the obligations thereby imposed, on certain terms and conditions specifically stated in the act. The proposal was open to all such utilities of the state and might be accepted by any in the manner and within the time prescribed in section 101, *supra*. In 1915 (Laws 1915, c. 110) Section 101 of the act was so amended as to extend the time within which such proposal might be accepted until July 1, 1917. On June 30, 1917, appellant accepted the proposal of the state by surrendering its franchise in accordance with the provisions of the act. By this acceptance the minds of the parties met and agreed on the terms of the proposal embodied in the act, and a contract was thereby concluded between the state and appellant whereby all the terms, conditions and provisions of the existing franchise agreement were abrogated and rescinded. The state was a party to the franchise agreement which the city of Greensburg made with appellant, acting for the state under delegated authority. Later the state, acting directly through its Legislature in making the proposal and through its Public Service Commission, on which it had conferred express authority in the premises, entered into a contract with appellant by the terms of which such franchise agreement was abrogated and rescinded in toto as to both parties. 'The extinguishment of the obligatory features of the old franchise as to one side, by necessary inference, operated to extinguish such features as to the other.' *Calumet Service Co. v. Chilton*, 148 Wis. 334, 356, 135 N W 131, 140.

"By the italicized part of the act quoted, the state attempted to violate the obligations of a contract made with appellant, by the force of which the franchise contract had been abrogated in all its terms as to both parties. The act attempts to revivify and re-establish some of the terms of the abrogated contract which were burdensome on appellant, and to enforce such terms against appellant without its consent. That part of the act, if enforced, would clearly impair the obligations of contracts, and for the reasons stated it must be held to be void as in conflict with the sections of the Constitution heretofore cited.

"The judgment of the trial court is reversed, with instructions to overrule the demurrer to the complaint and for further proceedings not inconsistent with this opinion."

## 244—Rehearing and Appeal

Hollis et al. v. Kutz, Chairman of the District of Columbia Public Utilities Commission, et al. Decision of the Court of Appeals of District of Columbia. April 5, 1920. 265 Federal 451.

William Hollis and another filed a bill in equity in the Supreme Court of the District of Columbia against the Commissioners of the District of Columbia, and as such constituting the Public Utilities Commission of the District, and the Washington Gaslight Company, to set aside certain orders of the Commission increasing gas rates in the District of Columbia.

On motion of the Commissioners, the bill was dismissed, and from the decree this appeal was prosecuted.

The Court says:

"The appeal can be disposed of upon a single question of jurisdiction. Plaintiffs were not parties to the proceeding before the commission." \* \* \*

The portions of the act under which proceedings may be instituted before the Commission are given.

"It thus appears that proceedings may be instituted by the Utilities Commission on its own motion, or by a public utility, as in the present case, seeking a readjustment of its rates, or by an interested party, who may make a formal complaint against the utility. This right of action against the utility will lie, whether the matters complained of originate with the utility or grow out of an order of the commission. In any event, however, formal complaint must be filed, hearing had, and a final order obtained from the commission, before the jurisdiction of the courts can be invoked.

"The equitable proceeding in the Supreme Court of the District of Columbia, under paragraph 64, is in the nature of an appeal rather than an original suit. The act contemplates that it shall be heard upon a transcript of the record made before the commission, and not alone upon evidence adduced at the trial, though additional evidence may be offered. However, if additional evidence is offered by the plaintiff, differing from that offered at the hearing, the proceedings in equity must be suspended pending further proceedings by the commission. \* \* \*

"It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the Utilities Commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. It follows that, in the absence of any complaint by plaintiffs, or hearing upon a formal case submitted to the commission, there is no basis for the present action.

"The decree dismissing the bill is affirmed."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### DISTRICT OF COLUMBIA

#### 631—Cost of Coal

Potomac Electric Power Company Application for an Amendment to Its Rate Schedule E and Other Rate Schedules. Decision of the Public Utilities Commission of the District of Columbia, Increasing Rates. September 3, 1920.

On May 28, 1920 the Potomac Electric Power Company filed its petition asking that its rate schedule E, applying to wholesale consumers, be amended by the insertion of a coal clause providing for an additional charge per consumer of three-quarters of one mill per kilowatt hour used monthly in excess of 1750 kilowatt hours for each 50 cents increase in the cost of coal over and above \$3.61½ per gross ton, and a reduction of three-quarters of one mill per kilowatt hour used monthly in excess of 1750 kilowatt hours for each 50 cents decrease in the cost of coal below \$3.61½ per gross ton. At the hearing the applicant enlarged the scope of the petition to include other classes of customers. The Commission ruled that it was without authority to pass any order modifying or changing the rates of the applicant in the face of the injunction of the Supreme Court of the District of Columbia enjoining the enforcement of the decision of the Commission of July 13, 1917. (Reported in 11 Rate Research 245). At the suggestion of the Commission the applicant obtained from the Court a modifying order permitting the Commission to pass an order to modify the available income of the company through its rates, such order to be subject to the approval of the court. After such action by the Court further hearings were held.

The Commission says:

"From the evidence before it in this case the Commission is convinced that the company is entitled to an increase in revenue, due principally to the increase in the cost of coal. The Commission feels, however, that a coal clause, such as that suggested by the company in its first application is objectionable inasmuch as there is less incentive to secure coal at the most advantageous price when it is known that the cost, whatever it may be, is automatically passed on

to the consumer. As the increase in the cost of coal affects all consumers of the company, although in varying degrees, the Commission believes that such increase should be borne as nearly as possible by each class in its proper proportion.

"The evidence presented shows that the rate of return earned by the company at the present charges under schedules B, C, D and F are fairly high and should not now be changed. The charges under schedules A, E, G and H and for street lighting are low in comparison and should be modified, so as to bring the rates of return thereunder more nearly in conformity to those of the other schedules.

"The Commission is of the opinion that the following increases in schedules A, E, G and H, together with the restoration of the rates for street lighting in force immediately prior to the issuance of its order number 223, should be made; increase the rates under schedule A from 8 cents to 8½ cents per kilowatt hour for the first 60 hours use monthly of the connected load, and from 5 cents to 5½ cents per kilowatt hour for all current in excess thereof; increase the rates under schedule E by one-half of a cent per kilowatt hour for all current now sold at 2 cents per kilowatt hour or less; discontinue the practice of giving discounts on certain portions of bills for current furnished under schedule G; increase the rate under schedule H from 3 cents to 3½ cents for all current sold in excess of 10 kilowatt hours; restore the rates for street lighting to those in effect immediately prior to the issuance of Commission's order number 223, dated July 13, 1917. Careful consideration has been given to the effect of these proposed increases upon the revenues of the company. Based upon the business of the calendar year 1919 and allowing for an increase at the rate shown to have taken place in the first six months of 1920, the new rates herein prescribed will increase the revenues by approximately \$400,000 per annum. This in the judgment of the Commission will enable the company to earn a return on the fair value of the company's property, based upon the Commission's valuation, of not less than six per cent per annum for the period during which this order is to remain in force."

## MARYLAND

### 300—Investment and Return

Chesapeake and Potomac Telephone Company of Baltimore City, Application for Permission to File a New Schedule of Rates. Decision of the Maryland Public Service Commission, Granting an Increase. August 18, 1920.

The Chesapeake and Potomac Telephone Company of Baltimore City filed a petition with the Public Service Commission on July 31, 1919 praying that it be permitted to file new tariffs and schedules; that pend-

ing action thereon it be allowed to charge and collect the rates made effective by order of the Postmaster-General; and that it be permitted to establish other and different rates sufficient to produce an adequate return upon its property used and useful in the public service. Hearings were held at which complete testimony was presented relative to the valuation of the property with the figures segregated as between Baltimore City and the balance of the state. The proceedings were greatly similar to the proceedings on the applications of the related Chesapeake and Potomac Telephone Companies before the Commissions of the District of Columbia decided May 26, 1920 (reported in 17 Rate Research 163, 183) and the State of Virginia decided July 23, 1920 (reported in 17 Rate Research 323, 340, 355)

### **362—Accrued Depreciation**

In a prior proceeding relative to the valuation of the Company's property for rate making purposes the Commission, after limiting the Company to accumulations in the depreciation reserve to a maximum average of 20 per cent of the plant investment, held that the Company should at all times thereafter be entitled to earn upon the remaining 80 per cent. Arguments were advanced in the present proceedings, based on life tables, that the structural value of the property was but approximately 70 per cent of its cost new.

The Commission says:

"The Counsel for the Protective Telephone Association interprets the ruling of the Commission in Case No. 690 to mean that the fair value for rate-making purposes therein found represents the Company's full investment to which should be added the investment subsequently made by the Company determined by deducting the accumulation in the depreciation reserve from its increase in plant investment.

"Notwithstanding the forceful arguments advanced by the Assistant General Counsel and the Counsel for the Protective Telephone Association, we are of the opinion that the Commission in deciding Case No. 690 had in mind the bringing of the Company's financial condition to a state of health and soundness, by permitting it gradually to create a depreciation reserve not to exceed 20 per cent. This is shown by the language used on page 54 of the opinion:

" 'Meanwhile the Company will further be held entitled to set aside out of earnings from year to year a sum to be added to its present depreciation reserves until such time as said reserves amount normally to a maximum average of 20 per cent of the plant investment.' "

"This plan outlined by the Commission, then composed of men with unusual knowledge and experience in corporate finance, we are not disposed to change. We are unable to agree with the contentions so ably presented by Counsel and hold that the Commission in Case No.

690 decided that the Company was entitled to earn upon 80 per cent of its plant investment and that a reserve might be created not to exceed 20 per cent."

#### **149—Holding Companies**

During the hearings considerable criticism was directed against the Bell System charging that it was, in effect, a monopoly, the American Telephone and Telegraph Company controlling the interstate field and the intrastate business by the same company, operating under the form of the Chesapeake and Potomac Telephone Company of Baltimore City. Regarding the relations of these companies the Commission says:

"The weakness of the local companies in resources and service as well as the advantages of a strong central organization brought about the gradual but eventual gravitation of the control or ownership of the local companies to the parent company and there emerged the giant Bell System with the powerful American Telephone and Telegraph and its many associated companies.

"It is this feature of the telephone situation in Maryland which was subjected to criticism. It cannot be denied that the parent company enjoys a monopoly of the long distance service and that the local company is without competition in the exchange message field. The parent company is engaged in interstate business and is subject to the jurisdiction of the Federal Commission. The local company is engaged solely in intrastate business and is subject to the jurisdiction of the State Commission. In the opinion of this Commission, such a plan of regulation is ideal in the case of a monopoly of this kind, and a criticism of such a form of organization becomes in effect a condemnation of regulation itself.\* \* \*

"The outstanding objection to the arrangements whereby, in consideration of the above, the local company pays  $4\frac{1}{2}$  per cent of its gross receipts is that the sum paid is made to depend upon gross revenues and is not proportionately relative to the value of the services. It may be contended that it is both customary and reasonable that the compensation to the parent company should be increased as the earnings of the local company increase, but it is also true that in a great measure the rates which result in the revenue are determined by the operating expense, and hence the greater the operating expense the greater will be the compensation of the parent company. The  $4\frac{1}{2}$  per cent payments under the present rates amount to 1.36 per cent of the cost new of the property on December 31st, 1919. In several jurisdictions values have been determined for the receiver, transmitter, and induction coil comprising the telephone set, estimates made of the replacement for wear and tear, the retirement of obsolete parts and substitution of improved apparatus, and a calculation made of a fair return for this part of the consideration moving to the local from the parent company, and this test seems to justify approximately one-half of the amount paid. The

other services rendered to the local company do not so easily permit of valuation. Under the agreement between the Company operating in Maryland and the parent company, the local company is able to borrow money at exceedingly favorable rates and during even the present times of shortage of money and of high interest the local company owes the parent company \$14,256,563 on 6 per cent demand notes. The financing of the proposed automatic exchange, which is to be established in Baltimore City, will be done by the parent company at 6 per cent interest, without any discount, the local company receiving 100 cents on each dollar. The Commission has recently had to pass on matters in connection with present-day financing of projects by other utilities under its jurisdiction, and hence appreciates the worth of this feature of the intercorporate agreement. There are also other services rendered in engineering, plant, traffic, commercial, legal and accounting matters.\* \* \*

"As did the Public Utilities Commission of the District of Columbia (P.U.R. 1920 D, p. 614), and the State Corporation Commission of Virginia in Case No. 885, July 23rd, 1920, we endorse the proposal made by the Indiana Commission:

"That the entire question of the  $4\frac{1}{2}$  per cent agreement be submitted to joint study by the American Telephone and Telegraph Company and the National Association of Railway and Utilities Commissioners, acting for the various Commissions of the country, in order that this important question may find uniform solution throughout the country.'

"Meanwhile for the purposes of this case, we will consider such payment a reasonable expenditure."

#### 400—Rate Theory

With respect to the suggestion for a segregation of valuation, and the fixing of rates, as between Baltimore and the balance of the state, the Commission says:

"The proposition advanced by the Protective Telephone Association of Baltimore City that the rate scheme for Baltimore City should be based upon local telephone property values therein met with a storm of protests from the counties. The plan was termed 'segregation' and the step called 'secession.' \* \* \*

"The Chesapeake and Potomac Telephone Company is the only state-wide utility under the jurisdiction of this Commission. Its lines reach every city, village and hamlet; it serves the whole people and plays a part in the pursuit of every profession, trade and calling. We would be loath to take any step which would discourage the extension and use of an instrumentality which is so important a factor in promoting the social, economic and political integration of our State, where are operating such centrifugal influences as

dividing waterways and mountain ranges, widely separated markets and marts, differing racial origins and traits, and a population almost equally divided between a great city and the farm.

"The petition of the Protective Telephone Association of Baltimore City was attacked by certain representatives of the counties with a vehemence explained only by the fact that they regarded the request for a separation of the Company's property, revenues and expenses, as the act of men impelled by an egoistic motive that would sacrifice State unity to pecuniary self-interest.\* \* \*

"It was earnestly contended by advocates of the State-wide principle that if the Commission should commit itself to the correctness of the plan proposed of treating the fair value of the telephone property, the revenues therefrom and the expenses thereon as a separate unit, it could not consistently refuse upon request to make similar separations with respect to Cumberland, Hagerstown, Annapolis, Salisbury and other cities and towns of the State, down to the smallest settlement. In point of fact, counsel for several of the above cities have already demanded that if the City of Baltimore is to be considered separately, the cities which they represent should also be so considered without relation to the State as a whole.\* \* \*

"The Commission finds these schedules of proposed rates throughout the State of Maryland not unduly discriminatory, and with the reductions hereinafter referred to, which do not materially alter the general plan, constitute a reasonably equitable distribution of the burden of the Company's required revenues among the various localities and classes of subscribers throughout the State. Should our investigation have disclosed the proposed classification to be in fact unduly discriminatory, we would have been required to relieve any locality or class of subscribers upon whom the burden bore unduly, as the wording of the statute is clear, the principle of decision plain, and the Commission's path of duty straight."

## WISCONSIN

### 340—Rate of Return

Menomonie Gas Company Application for Authority to Increase Rates. Decision of the Wisconsin Railroad Commission, Granting the Increase. August 27, 1920.

Application in this case was filed June 21, 1920 by the Menomonie Gas Company, an incorporated public utility operating a water gas plant in the city of Menomonie serving approximately 630 consumers.

The applicant alleges in its petition that due to the increased cost of production its present revenues are inadequate to meet operating expenses and provide for depreciation and return on the investment.

From the testimony the Commission found that for the year ended



June 30, 1919 the applicant earned nowhere near a reasonable return for depreciation and interest but that for the six months period, ended December 31, 1919, after making an adjustment for the item of taxes, the balance available for depreciation and interest amounted to approximately 10 per cent per annum on the book value of the plant.

The Commission says:

"This return can in no way be considered excessive but in order to maintain earnings at this rate under present conditions the applicant contends that the price of gas sold will have to be increased 50 cents per thousand cubic feet. This contention is based upon the claim that the cost of production materials and labor has increased by this amount since December 31, 1919.\* \* \*

"In the light of the present increase in operating expenses as shown above and the fact that the applicant did not make an unreasonable return on its investment during the six months period ended December 31, 1919 we find that the present rates are inadequate and that the proposed rates may not be deemed excessive or unreasonable."

## **NEW YORK**

### **228—Franchises**

Niagara and Erie Power Company, Application for Permission to Construct an Electric Plant and For Approval of a Franchise Therefor. Decision of the New York Public Service Commission (2D), Denying the Application. June 15, 1920.

This is a petition under Sec. 68, Public Service Commissions Law, for permission to the applicant to construct in the town of Dunkirk, Chautaugua County, an electric plant for transmitting and furnishing to the public electricity for light, heat or power, and for approval of the exercise of the rights and privileges under a franchise granted to the Niagara and Erie Power Company by the town board of the town of Dunkirk, March 9, 1920.

Certain conditions are embodied in the so-called franchise which are unusual in character and which require particular consideration, and in explaining the meaning of these conditions it should be stated that the city of Dunkirk is contiguous to the town of Dunkirk, and the permission and consent relate only to the town, which practically surrounds the city. The city of Dunkirk operates a municipal electric plant for both city and commercial purposes, and this applicant furnishes electric current to the city plant for its operations. It seems that the municipal plant desires to extend its activities outside of the city into the town.

The conditions to which reference has been made are: (a) that the applicant shall not sell or distribute electric current to any consumer

in the town of Dunkirk whose requirements for power are less than 75 kilowatts; (b) that the applicant company will, upon the written request of the board of water commissioners of the city of Dunkirk (said board being the controllers of the municipal lighting plant), furnish current to any consumer in the town of Dunkirk whose requirements for power are 75 kilowatts or more, "providing the company will receive a reasonable return upon the necessary investment"; (c) the applicant is prohibited from selling or furnishing electric current to any person, combination of persons, corporation or combination of corporations which shall redistribute same or any part thereof, except to the board of water commissioners of the city of Dunkirk; (d) that nothing in the franchise shall at any time be construed to prevent the board of water commissioners from selling or furnishing electric current to any consumer in any quantity or for any purpose; (e) in any case where the board of water commissioners are unable or unwilling to supply a consumer, then the applicant company shall serve such consumer, provided its requirements are less than 75 kilowatts, and providing the company shall receive a reasonable return upon the necessary investment.

In denying the application, the Commission says:

"An electric lighting corporation is a common carrier and may not discriminate between its customers, and the terms and conditions of service must be common to all and without discrimination, and as a consequence all individuals have equal rights, both with respect to the service and charges of such corporation. *Armour Packing Co. v. Edison Electric Illuminating Co.* 115 App. Div. 51, 100 N. Y. Supp. 605.

"Under the statute, therefore, it would seem that any condition or regulation imposed by the local authorities which interferes with the plain spirit of the statute must be considered an unreasonable regulation, otherwise the powers of the legislature are transferred to, or usurped by, the local authorities. The rights of such corporations to use the streets are granted to them by the state, subject to the imposition of reasonable regulation by the local authorities. A corporation securing such rights acquires them subject to certain important obligations defined in the statute, one of which is the requirement that it shall furnish current to all applicants within one hundred feet of its lines, on reasonable terms. By virtue of the conditions contained in this franchise, however, assuming them to be effective, the company would be freed from this obligation, and the discretion of the board of water commissioners would be substituted for the requirements of the law.

"The view of the Commission is that in general any given territory should be supplied by a single distributing company, which, so long as it complies with the law and gives satisfactory service, should be protected in that territory against the encroachment of other com-

panies. If the board of water commissioners is lawfully giving service in any territory in the town, it would be reasonable and proper to protect it in such territory. It is quite a different thing, however, for that board to have reserved to it the power of determining whether it or the applicant company shall supply particular customers in the same territory.

"The provision limiting the obligation of the applicant company to furnishing current to cases where it will receive a 'reasonable return on the investment,' is also objectionable. No such provision is contained in the statute and no such issue is brought into play when an application for service is made under Sec. 62 of the Transportation Corporations Law, which itself provides the conditions upon which service is to be rendered."

## DISTRICT OF COLUMBIA

### 630—Cost of Supplies

Washington Gas Light Company and the Georgetown Gas Light Company, Application For a Continuation of Its Present Rates. Decision of the District of Columbia Public Utilities Commission, Granting the Application. August 30, 1920.

By the terms of its order number 378, issued May 29, 1920, this Commission established new rates to be charged by the Washington Gas Light Company and the Georgetown Gas Light Company for gas furnished to consumers using less than 100,000 cubic feet per month, adopting for the first time a sliding scale of lower rates to wholesale consumers. These rates are as follows:

- \$1.25 per 1,000 cubic feet for less than 100,000 cubic feet of gas per month.
- 1.20 per 1,000 cubic feet for 100,000 cubic feet and less than 300,000 cubic feet per month.
- 1.15 per 1,000 cubic feet for 300,000 cubic feet and less than 500,000 cubic feet per month.
- 1.10 per 1,000 cubic feet for 500,000 cubic feet and less than 750,000 cubic feet per month.
- 1.05 per 1,000 cubic feet for 750,000 cubic feet and less than 1,000,000 cubic feet per month.
- 1.00 per 1,000 cubic feet for 1,000,000 cubic feet or more per month.

Owing to the uncertainty of the situation regarding the price and the supply of oil for gas making purposes, these rates were fixed for a period of three months to end August 31, 1920, at which time the rates would be automatically restored to the uniform rate of ninety-five cents per thousand cubic feet, unless this Commission should have ordered otherwise.

On August 10, 1920, the Washington Gas Light Company for itself and on behalf of the Georgetown Gas Light Company petitioned the Commission for a continuance of the existing rates for a period of two

months to end October 31, 1920, alleging that the cost of oil and coal as shown by the actual expenditures for the months of June and July was higher than in May, when the present rates were adopted. The petitioners also asked that a rate of \$1.35 be fixed for consumers using less than 100,000 cubic feet of gas per month, with corresponding increases in the step-rates for wholesale consumers, should the evidence presented in the case warrant such action.

The Commission says:

"While the evidence thus shows that the costs of production at this time are in excess of those used as a basis for the rates established by the Commission in May, 1920, still it is not unreasonable to assume that the sharp increase of 5 cents per gallon in the cost of oil in the month of June may be followed by an equally sudden decrease. It would therefore seem unwise to fix a rate for the future based on oil at  $12\frac{3}{4}$  cents per gallon.

"In view of these circumstances, it is the opinion of the Commission that a continuance of the present rates for gas for a period of two months to end October 31, 1920, is reasonable."

## MISSOURI

### 620—Factors Affecting Rates

Kelso Telephone Company, Application For An Increase In Rates. Decision of the Missouri Public Service Commission Denying the Application. June 5, 1920.

In denying the application of the Kelso Telephone Company, for authority to increase its rates, the Commissioner says:

"The sincerity and good faith of the owners of this telephone system in their avowal of intent to use the money to be obtained above actual operating expenses from the higher rates in rehabilitating the property of the company for the purpose of giving better service is not doubted. However, the testimony shows that the new rates will yield total annual revenue of \$7,119, while the operating expenses for a like period are estimated to be \$7,089.20, leaving only the small sum of \$31.80 to be devoted to improving the telephone equipment for giving better service. Hence, it follows from the evidence offered by the company that the plan of the company to acquire funds to improve its equipment from the higher rates, in addition to meeting current operating expenses, cannot be depended upon.

"The Commission is warranted in refusing to authorize the rates as proposed for other reasons. The rates now charged by the company are usually considered ample in other localities in this state under similar conditions. The rates proposed by the company are higher

than have been approved by the Commission for telephone service under similar conditions.

"In determining the reasonableness of rates, the cost of giving service is usually the main factor. Utility operators are, however, not entitled to charge the public with the cost of operation, regardless of any consideration of the prudence of the undertaking or the manner of carrying it on.

"The company serves a population between four and five thousand and has only 164 stations which it serves, and now has 60 stations less than it formerly had. It is undisputed that the company has wholly failed to give adequate service to the community and the loss of business is the natural consequence of such conditions. The law imposes upon the company the obligation to give good service at reasonable rates. If the company is to continue to occupy the telephone field in the community in which it is now located, that obligation must be complied with, even though some financial loss results to the company upon the present investment.

"The property of the company as it now stands is worth little for rate-making purposes, because it does not appear to be adapted to furnishing the service required by the public. To give good service the system should be reconstructed, which will result in some loss of the investment in the property as it now stands, but there seems to be no other way out of this difficulty, and the time has come to meet the issue decisively. The company's difficulties are to be met by giving adequate service and procuring additional subscribers at the rates now in force and thereby securing more revenue, rather than by undertaking to add further increases in charges to the subscribers which are now served.

"The rates proposed by the company are unjust and unreasonable and the company will be required to withdraw the schedules containing the same."

## REFERENCES

### PUBLIC SERVICE REGULATION

#### 224—Rates

Cost of Money. *Journal of Electricity*. September 1, 1920. p. 229 three-quarter page.

The editor presents the following article, stating that the question of financing public utility improvements and extensions, rendered necessary by the phenomenal increase in demands for power, is inseparably bound up with the question of rate regulation, and that the financial crippling of a power company for the benefit of its customers eventually reacts in inadequate service to those customers.

"It is generally recognized that the revenues of public utilities are at present insufficient to enable them to supply their territory with adequate service,

and to enlarge their facilities in proportion to the continually increasing demands of the territory served, it being true that the revenues received for the service have been less than the necessary amount required to be expended to cover operating expenses, taxes and interest charges, and leave a sufficient reserve to offset accruing depreciation.

"Public utilities must, in the immediate future, incur large expenditures for deferred maintenance and postponed construction of needed betterments and extensions. \* \* \*

"It is clear that if the general public is to be adequately served, the Commission must adopt a policy of regulation that will permit or cause the public utilities to obtain the income needed to establish such adequate service, afford a reasonable wage for employes, and such return on present investment as will induce investors to furnish additional investment to enable the public utility corporation to continue its construction program.

"At present there seems to be no definite rule for rate regulation by public service commissions. There should be some effort to establish normal revenues, varied from time to time in accordance with the cost of money, and there should be some automatic or quickly available method for the varying of rates when necessitated by changed conditions.

"The responsibility for maintenance of the credit of the corporation so that it can be continued on a sound economic basis rests definitely with the regulating authorities, and there should be a clear recognition on their part that adequate service is more important to the general public than a restriction of profits to a minimum.

"The obligation to initiate reasonable rates and schedules as business exigencies require rests upon the management, and such management should not be interfered with by the regulating authorities except upon definite proof that the rates and charges, whether existing or proposed, are unduly burdensome. No complaint of the rates and charges of a public utility should have standing unless the complainant fully demonstrates the undue burden of his particular rate in relation to the circumstances of his use of the service.

"The following rule might well be adopted in fixing rates and charges by governmental authority:

"'A rate may be charged that is designed to yield the utility in each class of service rendered, aggregate revenues which will provide (after adequate charge for recurring renewals and depreciations) such net return upon a fair value in the circumstances (determined by public authority) of the property devoted to the public use as will be sufficient in amount to enable the public utility to obtain, at reasonable cost, the capital required to furnish the public with adequate facilities and efficient and economical service.'

"Under such a rule rates ordinarily would be established that would permit the general public to make full use of the facilities provided. Further, a continually increasing demand for additional facilities would practically demonstrate that the existing rates were reasonable.

"The public utility management will from time to time enter the money market and bid for new money for new facilities at as low a rate as possible, and the cost of this money to the company having good general credit should be construed as reasonable cost of money.

"There is no normal price for securities of any particular kind, the general rule being—the greater the security and the greater the probability of payment when due and the greater the probability of a dependable return, the higher the price of the security and the lower the cost of money."

**252—Commission Annual Reports**

Massachusetts Board of Gas and Electric Light Commissioners. Thirty-Fifth Annual Report. 1919. 711 pages.

The annual report of the Massachusetts Board of Gas and Electric Light Commissioners for the eleven months ending November 30, 1919, contains the orders and decisions of the Board; new legislation, 1919; a compilation of rates charged by gas, electric and water companies; report regarding the status of municipal ownership within the state; compilation of rates charged by municipal utilities; statistics for the private and municipal utilities of the state for the year ending June 30, 1919; and a closing statement in which the work of the Board of Gas and Electric Light Commissioners, since its creation in 1885, and the development of the industries of which it has had supervision is briefly reviewed.

**GENERAL****900—General**

Plan for Electrification of Italian Railways, Vice Consul James J. Murphy, Jr. Genoa. Commerce Reports. September 3, 1920. p. 1098. One page.

The general plan for the electrification of the Italian railways has been presented by the Administration of the Railways to the Minister of Public Works. The plan presented comprises 4,444 kilometers of lines to be electrified. The lines are divided into four general groups, as follows:

1. Lines to be electrified at once and by the Administration of the Railways directly,—1,332 kilometers.

2. Lines to be electrified in a second period; also by the Administration of the Railways directly,—1,122 kilometers.

3. Lines on which new systems of electric traction will be tried:

Rome-Anzio-Tivoli (tri-phase system with industrial frequency) 100 kilometers

Messina-Catania (system of continuous current at high tension) 946 kilometers

Cagliari-Monteponi (continuous current with ordinary tension and accumulation) 59.4 kilometers

4. Lines on which electrification will be intrusted to private industry, 1,736 kilometers.

**COURT DECISION REFERENCES****226.6—Abandonment of Service**

Lyon & Hoag v. Railroad Commission, et. al. Decision of the Supreme Court of California. June 11, 1920. Rehearing Denied July 8, 1920. 190 Pac. 795.

The petitioner seeks a review of an order of the Railroad Commission requiring it to reestablish its service of domestic water in a certain residence district of San Francisco, known as Lincoln Manor.

The Court says:

"The state has no power to compel the continued operation of a public utility

at a loss, where the owner of that utility is willing to and does in fact abandon to the public all its property that has been devoted to the public use. Since the submission of this case the Supreme Court of the United States has passed upon this question, and for that reason a discussion of the various decisions cited by the respondent in support of the order of the Railroad Commission is unnecessary. That court decided that 'a carrier cannot be compelled to carry on even a branch of its business at a loss, much less the whole business of carriage.' *Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, 251 U. S. 396, 40 Sup. Ct. 183, 64 L. Ed. —, A similar conclusion was suggested by our earlier decision in *Fellows v. City of Los Angeles*, 151 Cal. 52, 64, 90 Pac. 137, 141. \* \* \*

"The basis of the conclusion that the state cannot compel the operation of a public utility at a loss is that such an order is taking of property without compensation and therefore violates the Fourteenth Amendment to the federal Constitution. *Brooks-Scanlon Co. v. R. R. Comm.*, *supra*; *North Pac. Ry. Co. v. North Dakota*, 236 U. S. 585, 35 Sup. Ct. 429, 59 L. Ed. 735, L. R. A. 1917F, 1148, Ann. Cas. 1916A, 1; *Norfolk & Western Ry. Co. v. West Virginia*, 236 U. S. 605, 35 Sup. Ct. 437, 59 L. Ed. 745. The theory on which the state exercises control over a public utility is that the property so used is thereby dedicated to a public use. The dedication is qualified, however, in that the owner retains the right to receive a reasonable compensation for use of such property and for the service performed in the operation and maintenance thereof. Where, as in this case, the owner is willing to and does in fact abandon all the dedicated property to the public, there is no further basis upon which the regulatory power can be predicated. To require the former owner, after such abandonment, to continue to operate the property at a loss for the benefit of the public, would be a taking of such excessive cost of operation from such owner without compensation. The numerous cases cited by the respondent merely hold that a public corporation can be required to operate certain portions of its system at a loss, where the general business of which such system forms a part can be profitably operated. *State ex rel. Caster v. Kansas Postal Telegraph Cable Co.* 96 Kan. 298, 150 Pac. 544; *State ex rel. Public Service Commission v. Missouri Southern Railroad Co.*, 214 S. W. 381; *People ex rel. Hubbard v. Colorado Title & Trust Co.*, 178 Pac. 6.

"No case has been cited in which it has been held that authority exists to compel a public utility to operate at a loss on its whole system and investment, and the foregoing decisions of the Supreme Court of the United States determine that it cannot be done. This, we understand, is fully conceded by the respondent Railroad Commission. It contends, however, that the petitioner should be compelled to continue the service for a reasonable time pending its application to the Railroad Commission for leave to abandon its service, or for increased rates to enable it to profitably continue such service. No such question was raised before the Railroad Commission. There the whole controversy was as to whether or not the petitioner was a public utility corporation and subject to the jurisdiction of the Railroad Commission. The commission found that petitioner had wholly abandoned its water pipes and pumping plant August 10, 1918, and that thereafter the same had been operated and used by the Spring Valley Water Company at the request of the city officials of San Francisco and of the Railroad Commission. The order of the Railroad Commission under review was made June 10, 1919. We conclude that after such a complete abandonment to the public of all its property devoted to a public use the Railroad Commission is powerless to compel the petitioner to resume operations at a loss. The order of the Railroad Commission required the petitioner to resume service, without additional compensation, and therefore at a continued loss.

"The order under review is annulled."



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For statement of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible.

## COMMISSION DECISIONS

### WISCONSIN

#### 200—Public Service Regulation

Wisconsin Gas Association, Application for a Revision of the Standards of Gas Service. Decision of the Wisconsin Railroad Commission, Changing standards. September 8, 1920.

The Wisconsin Gas Association, representing and on behalf of nearly all the gas companies of Wisconsin, made application to have the rules of service amended so as to reduce the heating value required from a monthly average of not less than 600 British thermal units, with a minimum value of 550, to a monthly average of 520 B.t.u.'s, the gas as manufactured to be maintained between the limits of 500 minimum and 540 maximum. Formal objection was made against the Commission entering any order for the reason that the application was not made by any public utility and the applicants were not authorized by statute to make the application. The Commission says:

#### 230—Complaints

"The Wisconsin Gas Association is an organization of gas utilities. The application made by the Committee of the Wisconsin Gas Association is by the Association on behalf of the public utilities constituting the gas association. As any one of the gas utilities in the state could have made this application, there appears to be no reason why the Commission's jurisdiction should be denied because the application is made on behalf of all the different utilities by an association of the utilities. Many of the gas utilities, through their officers appeared at the hearing and took part in the proceedings. We feel that the application is within the strict letter of the public utility act and that the Commission has jurisdiction."

The arguments as set forth by the applicant in favor of a reduction from the 600 B.t.u. standard were: (1) Conservation of materials. (2) Better service can be rendered with a lower standard. (3) Present economic conditions make it imperative that relief be granted promptly. (4) A saving will be made in the cost of manufacture.

## 226.5—Standards of Service

"That all gas companies in Wisconsin have arrived at a crisis, there can be no doubt. The condition in which the public finds itself, so far as oil supply is concerned, is brought about largely by the constantly increasing demand for gasoline and is not entirely a result of war conditions or of inability to obtain transportation facilities. There appears to be little relief to be expected in the near future. The coal shortage, though responding to a different set of conditions, is very acute. The pooling of coal at the lake ports, though instituted as a war measure, is still in force and this has materially and very seriously reduced the quality. Should the pooling be discontinued it is very probable that even then the quality would not return to that obtainable before the war. Recent cargoes contained 4.7 per cent sulphur and 16 per cent ash, although until recently reasonable limits were  $1\frac{1}{2}$  per cent sulphur and  $7\frac{1}{2}$  per cent ash.

"Though this Commission was pioneering when it established the 600 B.t.u. standard and though, by its use, the interests of the gas consuming public have been jealously guarded, yet a general survey of other fields reveals unmistakably that standards much lower than ours are being universally adopted.

"A careful study of the large amount of data in our possession on this subject seems to show that a moderate reduction in the standard not only will not be noticeable in the domestic consumers' bills, but by the most painstaking scrutiny cannot be detected.

"Deposits of naphthalene and hydro carbons, which are now being intermittently thrown down and with which the operator is required to maintain a constant struggle, will, to some extent, be avoided. A lower standard will allow more nearly a fixed gas and the quality will be more uniform at the consumer's burner.

"Nearly all of the gas companies in the state have recently been authorized an increase in rates. These rates were based on the 600 B.t.u. standard. The extent of the effect of a lower standard on the cost of making gas is very indefinite and we are at this time unable to obtain trustworthy data to admit of making a forecast as to the influence it may have upon rates. Other things being equal, the cost will, of course, be lower with a lower standard. Changes are taking place so rapidly, not only in the gas business, but in all other lines of activity as well, that cycles are now enacted in days which formerly occupied months in their consummation. The Commission recommends that the officers of the cities involved should scrutinize the results obtained within the next few months and, if deemed advisable, bring any matters either of rates or service to our attention.

"The critical situation now existing and that probably can not be completely overcome as regards shortage of fuel in the Northwest

during the coming winter, and the undeniably serious situation with regard to the supply of oil for gas making, make the argument for the most economical use of these materials a very powerful one, and one that should not be ignored at this time.

"It is recognized that conditions in the various plants throughout the state will not be uniform, either as to quality and quantity of material which they will succeed in obtaining for gas making purposes, or as to their ability to make uniformly efficient use of those materials in the manufacture of gas. A number of the companies in the state have not been able, during the recent difficulties in obtaining materials, to live up to the present standard, and it may even be true that some of them will be able to live up to any new reasonable standard which could be set.

"These individual cases and the conditions governing them will have to be handled as they arise. In any event the Commission will retain jurisdiction in the matter and through its service department will keep close watch of the results obtained; will confer with the operating staffs of the various companies from time to time, and make such suggestions as may seem to be desirable in such a way as to get the best possible results for the consumer.\* \* \*

"We are not at all convinced but that unexpected difficulties may be encountered in some localities by the use of a lower standard due to lack of capacity of mains or of manufacturing equipment. It is recommended that each operator consider with great care all of these matters that the change may be attended by as little disturbance to the continuity of satisfactory service as is practicable. The standards to be set by this order are minimum values only and the greatest care should be used by each company in deciding what standards it will use. Should instances arise where this general order does not fully meet the requirements, such exceptions as may be deemed necessary will be made and jurisdiction is retained for that purpose.

"In consideration of all the conditions surrounding this matter it is the opinion of the Commission that the suspension of the present standard as hereinafter ordered should be treated as purely experimental. We do not at this time feel warranted in making the order permanent. The success to be obtained from the use of a lower standard will depend entirely upon the way the matter is handled by the various utilities. We are convinced that a lower standard will be just as satisfactory, and perhaps more so, if the proper care is exercised by the utilities. During this experimental period it is quite likely that individual utilities may require individual attention, and jurisdiction is retained for that purpose. The various gas utilities will be expected to make a careful survey of conditions surrounding their own individual equipment and their ability to obtain raw materials. They will then be expected to decide upon that

standard which will enable them to render the most efficient service and to supply the most uniform output. Each utility will be required to maintain its most efficient B.t.u. standard consistent with the raw material available and with its ability to maintain a uniform quality of gas, but the B.t.u. standard adopted shall in no case be lower than the minimum hereinafter ordered.\* \* \*

"All gas companies availing themselves of this opportunity of using a lower standard will be expected to make all necessary adjustments of consumers' equipment at their own expense and promptly.

We find:

1. That it is to the best interests of the consumers of gas in Wisconsin that the present 600 B.t.u. standard should be suspended for an experimental period.
2. That the unprecedented difficulties now being encountered in obtaining, in adequate quantity and reasonable quality, a supply of coal and oil make it imperative that the standard should be reduced.
3. That the disadvantages to the consumers will be very slight, if any, and that they are far outweighed by the benefits which will be brought about."

## OREGON

### 630—Cost of Supplies

Bandon Power Company, Application For Authority to Continue In Effect Increased Rates. Decision of the Oregon Public Service Commission, Granting the Application August 20, 1920.

On June 24, 1918, the Commission authorized the Bandon Power Company to increase its rates. On July 9, 1920, the company filed a supplemental application for an extension of time on the previous relief granted. The Commission says:

"A full and complete showing of all those facts has been made in a clear and definite manner so that the results of the operations of this utility are shown with precision. The operating difficulty and burdens of advance in fuel and labor costs have been increasing steadily and despite all of these handicaps the company has been giving continuous service under very trying conditions. There is a general spirit of cooperation upon the part of the citizens and residents of Bandon to the end that they may have continuous service without undue expense or making it prohibitive to the utility, and there can still be an improvement by further effort on the part of the users to reduce the peak load between the hours of 8 and 10 P. M. especially on Saturday nights. The utility is compelled to use only a

small unit which is of ample capacity to take care of the ordinary load but has not the capacity necessary to handle efficiently both the night and day load at the same time. It is absolutely necessary that this utility operate only a small unit and we feel it incumbent upon the patrons and citizens of Bandon to cooperate to the extent herein suggested.

"It was generally considered by business men and city officials present at the hearing that the power company under its present management was cautious in its expenditures and is operating under as economical a basis as is possible under the circumstances. In order to continue service to the extent and standard heretofore observed it is necessary to have a general raise in rates and even then such raise will yield little or no return upon the investment.

"The fuel situation is really the most difficult to face, and for that reason admittedly the only solution is to hold to the same unit which is now in operation. The day service seems to be the most expensive and least remunerative but the sentiment generally expressed was that the business men and residents would rather pay a higher rate and have it continued because of the correspondingly greater domestic and business convenience. The superintendent and manager has been working without pay during 1919 and up to the present time there was a very large operating loss, something over \$3,000 and the interest is unpaid on the indebtedness. \* \* \*

### 352—Expense

"A comparative statement applied to the operations for 1919 and 1920 during the period from January 1st, 1919, to July 1st, 1920, shows the following conditions:

Operating Revenues .....	\$23,670.62
Operating Expenses .....	28,126.78
Net Operating Loss .....	\$4,456.16
Taxes .....	553.00
Operating Loss .....	\$5,009.16

"It will be seen that it is futile for the utility to attempt to operate with any regard of preservation of itself or satisfaction to its customers under such rates and practices now in force and effect.

"That owing to increased operating expenses especially fuel and labor the present rates of the utility are inadequate and insufficient to enable the company to maintain service and provide for depreciation without a return on investment and are likewise unreasonable, unfair and unjustly discriminatory, and the following rates, rules and regulations are reasonable, just, fair and not discriminatory and should be imposed in lieu of those now in force and effect."

**720—Rate Schedules**

The Commission prescribed the following rates to become effective September 1, 1920:

**Residence Rates****Rate**

- 25 cents per kilowatt hour for the first 6 kilowatt hours used per month
- 17 cents per kilowatt hour for the next 14 kilowatt hours used per month
- 14 cents per kilowatt hour for the next 30 kilowatt hours used per month
- 12 cents per kilowatt hour for excess use

**Minimum Charge**

\$1.50 per month per meter

**Commercial Lighting****Base Rate**

To apply to first 30 kilowatt hours used per month, per kilowatt of active load.

- 25 cents per kilowatt hour for the first 6 kilowatt hours used per month
- 17 cents per kilowatt hour for the next 19 kilowatt hours used per month
- 14 cents per kilowatt hour for the next 25 kilowatt hours used per month
- 12 cents per kilowatt hour for excess use.

**Secondary Rate**

To apply to monthly consumption in excess of 30 kilowatt hours used per month, per kilowatt of active load.

- 12 cents per kilowatt hour for the first 100 kilowatt hours used per month
- 10 cents per kilowatt hour for excess use.

**Minimum Charge**

\$1.50 per month per meter

- 1.50 per month for the first 500 watts, or less, of active load
- 18 cents per month for each additional 100 watts

**Determination of Active Load**

The active load of all commercial lighting installations will be determined as follows:

33⅓% of the connected load of—Churches, basements, galleries and other rooms used only for storage in stores, factories, warehouses, docks and barns, except offices and general work rooms. Schools and Acadamies other than business colleges or night schools.

50% of the connected load of—Bedrooms in lodging houses, hospitals and hotels.

100% of the connected load of—Stores, except basements, galleries and rooms used only for storage; lodging houses, hospitals and hotels, except bedrooms and rooms used only for storage; offices and general work rooms in factories, warehouses, docks and barns, business colleges and night schools; lodge halls, dance halls and miscellaneous places of amusement; all other services.

No connected load will be considered as less than 500 watts.



**Power****Base Rate**

To apply to first 50 kilowatt hours used per month per horse power of demand (or first 60 hours used per month per kilowatt of demand)

12 cents per kilowatt hour for the first 150 kilowatt hours used per month  
9 cents per kilowatt hour for the next 300 kilowatt hours used per month  
7 cents per kilowatt hour for over 500 kilowatt hours

**Secondary Rate**

To apply to monthly consumption in excess of that under the Base Rate.

7 cents per kilowatt hour for the first 1,000 kilowatt hours used per month  
6 cents per kilowatt hour for excess use

**Minimum Charge**

\$2.50 per month per horsepower for the first 2 horsepower of demand  
2.00 per month per horsepower for over 2 horsepower of demand  
No minimum for 3 phase power less than \$3.00 per month

**Determination of Demand**

Demand of power installation will be considered at 100% of the connected load of installations up to and including an aggregate rated capacity of 10 horsepower.

"In view of a great increase in the cost of operation of both labor and material which reflects in replacing the lights and globes for the city, it appears but fair and reasonable that the city should likewise increase the present price of \$178 by 20 per cent. However, inasmuch as the applicant was not insistent upon this point and in view of the record and the facts brought out in the testimony, the Commission will afford the parties an opportunity to further confer, and not pass definitely upon this rate at this time."

**INDIANA****366—Depreciation Funds**

Northern Indiana Gas & Electric Company, Application For Modification of Order Forbidding the use of Depreciation Fund For Extensions For a Period of Over One Year. Decision of the Indiana Public Service Commission Denying the Application. June 18, 1920.

Susequent to the issuance of the consolidated order involving gas rates in Frankfort, Wabash, Logansport, Lebanon, Peru, Michigan City, and Crawfordsville, the Northern Indiana Gas & Electric Company filed an application with the Public Service Commission asking that the depreciation clause, contained in that consolidated order, be modified so as to permit the petitioner to borrow from the depreciation funds created for an indefinite period of time rather than for a period of one year, as provided in the original depreciation clause, said money to be used for additions and betterments and not to be capitalized.

In denying the application the Commission says :

"The depreciation clause contained in the original consolidated order is as follows :

"It is further ordered, that the Northern Indiana Gas & Electric Company and the Peru Gas Company, shall pay into the separate depreciation funds created above, the moneys provided for depreciation, which fund shall be held separate and handled with proper accounting ; that there shall be paid out of this fund all costs of meeting depreciation. Money so accumulating in said fund should be invested, and if invested, such investment shall be made in Government or other high grade listed securities which shall return to said fund not less than 4 per cent interest per annum ; or petitioner may borrow from this fund, for a period of not to exceed one year, money to cover not more than 75 per cent of the cost of new construction, extensions, or additions to the property—items properly chargeable to capital account—but, in such event, petitioner shall pledge to such fund its own note or bonds bearing interest at the rate of not less than 4 per cent per annum. Such moneys so borrowed by petitioner shall be repaid in full within one year. In handling such fund, petitioner will be held strictly accountable for its safe investment, proper administration, and accounting. Said accounting shall be kept double entry with the asset account designated as "depreciation fund" and the liability account designated as "depreciation reserve."

"Supporting its contention, petitioner represented : 'that, in practically every city named in said orders, there is an active demand for betterments and extensions and particularly main extensions, and that this petitioner is having great difficulty in procuring sufficient capital with which to function in said localities and particularly with which to meet the apparently increasing demand for gas main extensions ; that it is highly desirable that said depreciation fund, as it accrues, be made applicable to the cost of new construction, extensions, or additions to the property ; that when so applied and not capitalized the effect is to give the patrons of the company the benefit of having said fund invested assumably on a 7 per cent basis ; that said order permits of the use of said depreciation reserve in meeting the cost of new construction, extensions, and additions through a loan of such fund to the company for the period not to exceed one year ; that the unsettled condition of the money market, the high rate of interest at which securities generally are selling, all suggests that, within the period of one year, petitioner will be unable to refund money so used except at such rates of interest and discount as would be detrimental to the enterprises affected, and your petitioner believes that it is to the best interests of petitioner and its patrons that said order be modified to permit the use of said fund in manner and form as set out in said order, but that the period of said loan of such fund be extended beyond one year, and petitioner believes that with proper

method of accounting, tending to conserve said fund, the intention and purpose of the Commission, in reference to said depreciation fund, can be fully accomplished by amending said order to provide for the use of said fund to permit the petitioner to borrow from said fund money to cover not more than 75 per cent of the cost of new construction, extensions or additions to the company at a rate of interest not less than 4 per cent, said loan to continue until such time as in the judgment of the Commission said amount can be capitalized upon a basis not injurious to said enterprises.'

"Preliminary to a decision on this point, it is necessary to examine the consolidated order in the various cases for the purpose of ascertaining the annual amount which would be realized by the 1½ per cent depreciation allowed in each cause. This is reflected as follows:

City	Annual Depreciation Allowance
Frankfort .....	\$3,162.24
Lebanon .....	2,097.26
Logansport .....	5,780.15
Wabash .....	3,114.51
Peru .....	4,076.94
Crawfordsville .....	3,004.74
Michigan City .....	6,638.01

"In other words, on March 30, 1921, or at the end of the first year's operation, under the consolidated order above referred to, assuming that no money had been spent during that period of time for replacements out of the accruing depreciation allowance, the gas utility, in each of the above towns, would have, in a separate fund, credited to its depreciation reserve, exactly the sums outlined in the foregoing table.

"Under the order as originally provided, these several sums and sums subsequently arising through the operation of these depreciation clauses, must be spent for replacements and for other expenditures properly chargeable for the reserve for depreciation. The original depreciation clause tends to safeguard this fund as a separate and distinct fund for the very purpose of insuring the expenditure of the money thus realized for the purpose intended, to-wit, for meeting accruing depreciation and building up a reserve for depreciation that has not accrued. True, under the depreciation clause in the consolidated order, this money may be borrowed for purposes of extensions but must be repaid within a period of a year. The Commission has adopted this policy after careful and extended deliberation, and there must be something exceptional in the circumstances of the petitioner to warrant the Commission in departing from this established policy.

"The record does not disclose any situation peculiar to this company, which would warrant the Commission in modifying its general policy

with respect to the handling of the depreciation reserve. If, for example, the petitioner were able to show the Commission that, in the past, all realized depreciation has been taken care of and the property kept up to its theoretical perfect state of efficiency, then there might be some reason for the Commission permitting money to be diverted temporarily from this depreciation fund for a period of more than one year and, in fact, for an indefinite period, providing, of course, it never were capitalized. The evidence in the consolidated cause, however, indicated that such was not the condition. On the other hand, the evidence was general and cumulative that not only realized depreciation has not been properly met, but that maintenance even was deferred. The record abounds with testimony indicating that the only replacements to the property, within the last several years, have been such as were absolutely necessary to keep the plant in operating condition and that even maintenance has been cut down as far as possible, consistent with actual operation of the properties. In other words, the evidence as insisted upon by the petitioner, conclusively points to the belief that the petitioner in all of the properties affected, will need every dollar of the amount accruing in the depreciation fund to take care of depreciation that has accrued within the past few years and that which will accrue during the current and coming years. The Commission is inclined to believe that the property should be properly maintained and realized depreciation cared for, and that extensions and betterments should not be made at the expense of the present property. Under the showing made by the petitioner, therefore, the Commission cannot see its way clear to modify this depreciation clause. The application will, therefore, be denied."

## MISSOURI

### 226.2—Extension of Service

Mrs. Kate Harris v. Missouri Public Utilities Company, Complaint As to Refusal of Electric Company to Extend Line. Decision of the Missouri Public Service Commission, Ordering the Extension Made Upon Conditions Prescribed. July 10, 1920.

The Missouri Public Utilities Company is willing to supply the complainant with electricity at the rates now charged other consumers, provided the complainant will pay the cost of extending the distribution system of the defendant to her premises. Complainant is willing to pay for electricity at the usual rates, but insists that defendant pay the cost of extending its lines to furnish her service.

The Commission says:

"The representative of complainant insists that since the defendant is engaged in the business of generating and supplying electrical energy to the public under a franchise granted by the city that the

defendant must at its own cost extend its lines and supply electricity to all who desire to purchase the same within the city. The law does not support the proposition as urged by complainant. See *Zeilda Forsee Investment Co. v. St. Joseph Gas Co.* 196 Mo App 371, 195 S W 1. c. 54, and cases cited; *St. Joseph v. St. Joseph Gas Co.*, 5 Mo P. S. C. R. 1. c. 313; *St. Joseph v. St. Joseph Gas Co.*, 3 Mo P. S. C. R. 515, P U R 1916E, 204; *Ulrich v. Eastern Pennsylvania Light, Heat & P. Co.*, P U R 1917D, 453. The fact that the defendant has accepted a franchise and has undertaken to furnish the entire community with electricity does not of itself require the defendant to extend its service to any resident of the community who may request the same. The defendant has undertaken a duty of a public nature in supplying electricity to meet the necessities of the public. The obligation imposed by law upon the defendant does not give each or any number of persons in the community the right to demand electric service from the defendant under any and all circumstances. The defendant has only undertaken and incurred the legal obligation to discharge its duty to furnish electricity to the public when there is a reasonable demand for it; hence the question to be determined upon considering a proposed extension, is whether there is a reasonable demand for such extension.

"The demand upon the defendant for the extension of its lines to the premises of complainant at an estimated cost of \$396, to be borne by the defendant to supply complainant with electricity, as indicated by the evidence, is not a reasonable demand and will be denied. The unusual distance of the house of complainant from the public street should not be made to burden the company unduly, which would be the case should it be required to pay the cost of the extension across the property of complainant. We are in sympathy with the desire of the complainant for electric service, and hold it to be unjust and unlawful to require the defendant to extend its lines as proposed at the cost of the defendant, yet we suggest as a fair settlement of the controversy that the defendant construct the proposed extension, at its cost, to the property line of complainant at Kings Highway where the telephone wires enter her premises, and that complainant bear the cost of constructing the extension from that point, 375 feet to her house. The cost of the extension to be thus built by the defendant is estimated to be \$259, the complainant to guarantee to use electricity to the amount of \$2.50 monthly for a period of five years.

"The complaint herein, in so far as it requests an order upon the defendant to make the extension of its lines to the complainant's premises wholly at the cost of the defendant, will be denied. Jurisdiction of the case will be retained, however, for the purpose of considering and making an order for an extension of lines to the complainant's premises upon the conditions which we have named above as reasonable and fair, in the event that complainant should agree to such terms and apply for such an order."

## REFERENCES

## PUBLIC SERVICE REGULATION

## 200—Public Service Regulation—Law and Practice

Engineers Commend Commission. Resolutions Passed by the Western Society of Engineers. Electric Railway Journal. September 11, 1920. p. 504.  $\frac{3}{4}$  page.

There is a great deal of agitation in Illinois at the present time which seeks to abolish the Public Utilities Commission in order that the control of utilities may be left to the communities in which they operate. The board of directors of the Western Society of Engineers, at its meeting August 25, 1920, drew up a set of resolutions commending the commission and urging its retention.

A brief abstract of the resolutions, with the main points outlined, is given as follows:

"(1) The old method of securing the service and establishing the rates of a utility in a city was the natural but primitive one of forcing the utility to make the best bargain it could with the City Council, the bargain being expressed in the form of a franchise or contract ordinance; (2) the old system, like any commercial bargain, not based on costs, resulted in poor service where rates were too low, extravagance and corruption where they were too high, and the worst kind of local politics and practices; (3) the citizens elected the City Council to represent them in the bargain. The owners of the utility company similarly elected directors and officers to represent them. This method was obviously unfair, since a square deal required a third party as judge, to whom each side could present its argument for an impartial decision; (4) the old system has proved a failure, after long trial, not only for reasons suggested above, but also because it left the service-using public helpless against either poor, inadequate service or unjust rates during the contract period; (5) the new system of state regulation of service and rates by a commission is a natural and logical outgrowth of the attempt to remedy the obvious and unvariable faults of the old system; (6) home rule, so called, as now proposed is but a proposition to popularize the old system by giving it a good name; (7) in our opinion the only thing which has saved any semblance of adequate utility service in Chicago under present cost conditions is the fact that the contract ordinances, established by the City Council under the old system and still fought for by the city administration, could easily be broken and overruled by the action of the state commission under the working of the new system; (8) the public might benefit under the old system except for two important facts; first, good service is more important than a low fixed rate in any city; second, no utility company can be forced to do the impossible, that is, to give good service, or service at all adequate, after its receipts cease to meet its expenses; (9) opposition to control of utilities through a state commission seldom, if ever, takes the form of objection to any feature of the regulatory law under which the commission acts. There is opposition to having a commission at all and opposition to its personnel, but no acts performed by the commission under the law and under its oath of office are pointed out as against public interest or as being unfair and unjust. The public is safeguarded from illegal or unjust acts of the commission by the fact that such acts are always subject to court review; (10) there are forty-two state commissions in the United States and five commissions in Canada, and they have found it necessary and to the public interest to raise utility rates since the war. It is not a local issue, nor can the Illinois commission be pointed at as a special offender in this regard, as some are trying to make it appear. The old rates are now as impossible with the utilities as with other necessities; (11) the basis of old-time rates has changed with the tremendous changes in wages and other

costs. This fact seems to us self-evident and to dispose of most of the argument to restore so-called home rule in order to get back the old 5-cent fare. It cannot be done under the old system any sooner than under the new. Service, the really important factor to the people, will be jeopardized by such a reactionary change; (12) the commission has performed its proper duty in increasing rates to meet present conditions and will be an equally effective agent in decreasing them should conditions warrant reductions in the future; (13) any attempt to impair the usefulness of the commission, to abridge its powers, and especially to go back to the old era of political control of utilities, in vogue prior to the time when commission regulation became the law, would be a distinct step backward and would constitute a grave menace to the industries of the state and to its people."

### **GENERAL**

#### **910—Promotion and Growth of Business**

Central-Station Expansion in 1920. *Electrical World*. September 11, 1920. p. 518. 2 pages.

In endeavoring to ascertain the extent to which the central stations are expanding during 1920, the *Electrical World* undertook a survey of the central station industry, and the results are shown in tables accompanying the article. Two hundred and twelve companies rendered returns, representing 54% of the total installed capacity of the central station industry. A summary of the proposed extensions shows a total addition of 1,240,583 kilowatts in generator installations; the probable total installed capacity of all central stations on January 1, 1921, therefore, will be 14,310,000 kilowatts. The total value of new units and extensions in transmission lines during the year is estimated at \$141,867,847 with the largest proposed expansion in both plant units and total value in the Atlantic States, and the greatest extensions by hydro-electric plants in the Mountain and Pacific States.

### **COURT DECISION REFERENCES**

#### **200—Public Service Regulation**

*City of Scranton v. Public Service Commission (Scranton Railway Company, Intervener.)* Decision of the Supreme Court of Pennsylvania. June 26, 1920. 110 Atlantic 775.

The ordinance of the City of Scranton provided that the street railway fare should not exceed five cents within the municipal limits. The railway company, through a permissive order of the Public Service Commission, increased its unit fare to seven cents. An appeal from this order to the superior court was dismissed. An appeal from the decree of the superior court was allowed, limited, however, to a consideration of the constitutional question of the power of the legislature to authorize the Scranton Railway Company to charge a fare in excess of that fixed in the consenting ordinance.

The Court says:

"The Legislature could not have authorized the construction of a street railway within the limits of the city of Scranton without its consent, for the mandatory words of section 9, article 17, of the Constitution are: 'No street passenger railway shall be constructed within the limits of any city, borough or township, without the consent of its local authorities.' \* \* \*

"While the constitutional provision requiring the consent of a municipality to the construction of a street railway within its limits is clear and can have but one meaning, it must be read in connection with the equally clear third section of article 16 of the Constitution, which declares that—

"The exercise of the police power of the state shall never be abridged or so

construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.'

"This is but declaratory of an implied power of the state, inherent in all forms of government (*Commonwealth v. Vrooman*, 164 Pa. 306, 30 Atl. 217, 25 L R A 250, 44 Am. St. Rep. 603), and it needs no constitutional reservation or declaration to support it.

"Street passenger railways have become necessities. They exist everywhere, and contribute in a very large measure to 'the general well-being of the state,' as means of transportation and communication, not only between closely connected communities, but also between those widely separated. Though this is so, they cannot be operated in any municipality without its consent. With such consent they may be, and, as between the local authorities and the railway companies, there may be attached to it terms and conditions which must be performed by the companies, but a municipality may not annex such terms to its consent as will deprive the commonwealth of its inherent police power to see that a street passenger railway company is not prevented from serving the public by the municipality's enforcement of conditions in a consenting ordinance that have become impossible of performance. What may have been a reasonable rate of fare at the time of the passage of a consenting ordinance may, under changed economical conditions, become confiscatory, and a street passenger railway company may not be able to serve the public on account of insufficient revenues, based upon the fare fixed in the ordinance. When such situation arises, as it has arisen and will arise again, there must be relief somewhere to the public, and it lies in the police power of the state, which is never to be abridged nor bartered away.

"When the city of Scranton gave its consent to the construction of what is now the Scranton Railway, it exercised a constitutional power conferred upon it, but it is conclusively presumed to have known at the time the consenting ordinance was passed that the sovereign police power of the state to modify its terms would be supreme whenever the general well-being of the public so required. In exercising the power given it by section 9 of article 17 of the Constitution, the city did so with section 3 of article 16 before it, giving it distinct notice that the police power of that commonwealth was, and would be controlling. With this knowledge on the part of the municipality at the time it passed the ordinance, it is not now to be heard to complain that the state has struck down its contract or agreement with the street passenger railway company. The state has done nothing of the sort, but has merely enforced a condition, written by the law into the ordinance at the time of its passage, that it would at all times be subject to the police powers of the commonwealth. That power includes the regulation of charges for services rendered to the public by public service corporations, and the state has exercised it in the passage of the Public Service Company Act, under which the Public Service Commission passes, in the first instance, upon all changes of rates made by public service corporations, subject to review by the courts. *St. Clair Borough v. Tamaqua & Pottsville Electric Railway Co.* et al. 259 Pa. 462, 103 Atl. 287, 5 A. L. R. 20.

"While the foregoing conclusion is so clear upon reason and certain fixed principles of government as not to require the citation of authorities to support it, they are to be found everywhere. \* \* \*

"The Public Service Commission having, in the case under consideration, exercised a power lawfully conferred upon it by the state, its action is not to be disturbed as being a violation of the constitutional right asserted by the city of Scranton to insist upon the continuance of a five-cent rate of fare, for no such right exists. The order of the superior court is affirmed, at the costs of the appellant."



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## Rate Research

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